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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 601.

THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND OF THE STATE OF FLORIDA, APPELLANTS,

vs.

CHARLES P. GREENOUGH, ADMINISTRATOR OF FRANCIS VOSE, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED OCTOBER 5, 1881.

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Order to

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In the United States circuit court, northern district of Florida.

FRANCIS VOSE ET AL.
vs.
TRUSTEES INTERNAL-IMPROVEMENT FUND OF Florida et al. } In equity.

Appeal of Trustees Internal-Improvement Fund of Florida from decrees of honorable Thomas Settle, district judge, sitting as judge of circuit court of United States, 5th judicial circuit, northern district of Florida, eastern division, at Jacksonville, Florida.

2 In the fifth circuit court of the United States for the northern district of Florida.

To the judges of the United States circuit court for the northern district of Florida.

Francis Vose, a resident and citizen of the State of New York, brings this his bill of complaint against Harrison Reed, who is the governor of the State of Florida; Robert H. Gamble, who is the comptroller of said State; Almon R. Meek, who is the attorney-general of said State; Frank W. Webster, who is the surveyor-general and register of public lands of said State; Simon B. Conover, who is the treasurer of the said State; John S. Adams, who is commissioner-general of immigration of said State, the six last-named persons being trustees as hereinafter mentioned and citizens of said State; the Trustees of the Internal-Improvement Fund of Florida, a corporation created by act of the gen-
3 eral assembly of said State, located within and a citizen of the same; David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, late trustees, as hereinafter described, and all of them residents and citizens of said State; the Pensacola and Louisville Railroad Company, the Florida Canal and Inland Transportation Company, the Southern Inland Navigation Company, all of said last-named companies being corporations created by acts of said general assembly of Florida and residents and citizens of said State; the New York and Florida Lumber, Land and Improvement Company, a corporation created under the laws of the State of New York, but designated to be located and to do business in said State of Florida, and actually located and doing business therein, and therefore a resident and citizen thereof; Myron S. Mickles, the agent of said last-named company, a resident and citizen of said State; and Hubbard L. Hart, a resident and citizen of said State.

4 And thereupon your orator complains and says that on the sixth day of January, in the year 1855, "An act to provide for and encourage a liberal system of internal improvements in this State" was approved by the governor of Florida, by which said act certain lands and proceeds from sales of the same were set apart and declared a distinct and separate fund, to be called the internal-improvement fund of the State of Florida, and to be strictly applied according to the provisions of said act; and for the purpose of assuring such application, the said lands and the funds arising from the sales thereof, after paying the necessary expenses of selection, management, and sale, were errevocably vested in five trustees, to wit, in the governor of the State of Florida, the comptroller of public accounts of said State, the treasurer,

the attorney-general, and the register of public lands of the State of Florida, and their successors in office, to hold the same in trust for the uses and purposes thereinafter provided, with the power to sell and
5 transfer said lands to the purchasers and receive payment for the same, to invest surplus moneys arising therefrom, and the surplus interest accruing from such investments, and to pay out of said fund, agreeably to the provisions of said act the interest from time to time as it might become due on the bonds to be issued by the different railroad companies under authority of said act, and with further power to receive and demand semi-annually (after each separate line of railroad is completed) the sum of one-half of one per cent. on the entire amount of bonds issued by said railroad company as a sinking fund for the payment of said bonds as the' should fall due.

And your orator further shews that by the fourth section of said act two lines of railroad were indicated as proper improvements to be aided from said Internal-Improvement Fund, one of them being "a line
6 from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Keys, in East Florida." And that by the fifth section of said act the several railroads already chartered, or which might thereafter be chartered, any portion of whose authorized routes should be within the lines laid down in section four, should have the right of constructing such portion of the line on giving notice to said Trustees of the Internal-Improvement Fund of their full acceptance of the provisions of said act, etc. And that by section eight of said act it was further provided that, on completion of said railways in manner and form set forth, said companies should be authorized to issue coupon bonds as described therein, at the rate of eight thousand dollars per mile, for the purchase and delivery of the iron, rail spikes, plates, and chairs. And that by section ninth of said act certain duties are imposed upon such railroad companies, the comptroller of public accounts, and
7 the state treasurer which should perfect said bonds, secure the payment of the coupons, or interest upon the same, thus making them salable in the markets of the world, in accordance with the comprehensive design of said legislation; all which will more fully appear by reference to a copy of said act hereto annexed and marked Exhibit A, and which your orator prays may be taken as part of this his bill of complaint, with the usual liberty of reference.

And your orator further shews that on the first day of February, 1869, an act was approved constituting the commissioner of immigration of the State of Florida a member ex-officio of the board of trustees of the internal-improvement fund aforesaid.

And your orator further shews that the Florida Railroad Company, at that time already organized and chartered by the legislature of Florida, during the early part of the year 1855 did, in accordance with the provisions of the act first aforesaid, give notice to The
8 Trustees of the Internal-Improvement Fund of the full acceptance by it of the provisions of said act for so much of the lines of railroad as lay between Amelia Island, on the Atlantic, and the waters of Tampa Bay, in South Florida, with the extension to Cedar Keys, in East Florida; the work on so much of said lines as lay between Amelia Island and the proper point for the branching of the extension to Cedar Keys, together with the said extension, to be commenced immediately, and the line from said points to the waters of Tampa Bay to be commenced as soon as chartered privileges therefor could be obtained.

And your orator further shows that, on the fourteenth day of Decem-

ber. 1855, an act amendatory of their said charter so as to extend the said privileges was approved, giving to said company the power to csnstruct the railroad from Amelia Island, on the Atlantic, with an extension to Cedar Keys, in East Florida; that said company
9 undertook to construct said lines of railroad accordingly, and gave due notice thereof to the said The Trustees of the Internal-Improvement Fund.

And your orator further shows that in accordance with the said section eight and section nine of the act first aforesaid, the said Florida Railroad Company did issue a large number of coupon bonds which were recorded by the said comptroller of public accounts and the record certified on each bond, each of which bonds, as your oratoris informed and believes, was dated the first day of March, in the year 1856, andconditioned for the payment of $1,000 on the first day of March, in the year 1891, in the city of New York, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of March and September in each year, which semi-annual interest was represented by coupons attached to said bonds and payable to bearer in the city of New York; that one hundred and ninety-five of said bonds were, on or about
10 the first day of November, in the year 1858, issued and delivered by the said Florida Railroad Company to Vose, Livingston & Company, a copartnership firm in the city of New York, in the State of New York, composed of your orator and Edward Livingston and Charles L. Perkins, on account of an indebtedness to said firm for iron furnished by the said firm to the said The Florida Railroad Company, and used in the building and for the purposes of its railroad; that the said firm was dissolved on or about the first day of May, in the year 1858, and all the interests of the said Edward Livingston and Charles L. Perkins in the said bonds were transferred by them to, and became, and were, and still are vested in, your orator, and he individually became and still is the owner and holder of the same; and that there is owing and unpaid thereon the entire principal thereof, and also the entire interest accrued upon the same, except the coupons payable
11 and which were paid in the year 1860.

And your orator further shows that the said The Florida Railroad Company failed to provide the interest on the bonds issued by it as aforesaid, and the sum of one per cent. per annum as a sinking fund, as required by the provisions of the aforesaid act, and had been so in default for a period of about three years, when, on or about the sixth day of October, in the year 1866, the said The Trustees of the Internal Improvement Fund took into their possession the railroad of the said The Florida Railroad Company, and all the property of the said company, and advertised the same for sale at public auction, at the town of Gainesville, in the State of Florida, on the first day of November, in the year 1866; and on that day, at the place last mentioned, it was announced as the terms of the sale, that the purchaser should be
12 bound to continue the payment of one-half of one per cent. semi-annually to the sinking fund, until all the outstanding bonds should be discharged, and that said sale was subject to all the conditions of the aforesaid act; and the said railroad and all the said property were then and there exposed for sale, and were sold for the sum of $323,400, and a deed therefor was executed by said trustees to one Edward N. Dickerson and his associates.

And your orator further shows that with the said sum of $323,400, and without providing for the payment in full of the coupons on said bonds,

which were already past due, the said trustees decided to purchase the outstanding bonds of said company, paying therefor the entire purchase-money, equally divided among the whole number of bonds outstanding, which would give to each bondholder two hundred dollars; that they actually purchased and paid for eleven hundred and twenty-eight
13 bonds, which left in their hands a balance of $97,800 to be applied to the purchase of the remaining bonds, provided the holders thereof were willing to sell them at the aforesaid rate, or to be invested in the sinking fund. That in November, 1866, they deposited this sum in the hands of Moses Taylor, esq., of the city of New York, to be used by him in conformity with a resolution of said The Trustees, etc., adopted on the 7th day of November, in the year 1866, in substance as follows:

Resolved, That the $97,800 in hand arising from the sale of the Florida Railroad be deposited on call in the City Bank of New York, and that Moses Taylor be appointed confidential agent of this board for the purpose of taking up the first-mortgage bonds of the Florida Railroad Company, with instructions to purchase the same, including the past-due coupons, at not more than twenty per cent. upon the principal of said bonds.

And your orator further shows that other large sums of money have from time to time been received by the said The Trustees of the Internal-
14 Improvement Fund of the State of Florida under and by virtue of the provisions of the aforesaid act, but that they have wholly failed to apply the same to the payment of the interest or past-due coupons on said bonds; that instead thereof they have misappropriated and wasted more than $200,000 of the same by loaning it upon, or otherwise applying it to, the purchase of or investment in worthless securities called Confederate scrip, or bonds, which Confederate script are of no value whatever, and the whole amount of said fund represented thereby is a total loss; that in, or shortly prior to, the year 1866, they purchased, with $41,000 of the same bonds of the State of Florida at par, the bonds and credit of that State, then being greatly below par, which fact was well known to the said trustees, and which bonds still remain unpaid; that on the 11th of March, in the year 1867, the said trustees adopted a resolution to lend to the State of Florida $45,000 of the same in certificates of the treasurer of
15 the said State, which said certificates had been previously received by said board upon loans of the funds or monies of the said internal-improvement fund, all of which said transactions were in violation of law, and of the duty of said defendant; that in June, in the year 1867, the said trustees adopted a further resolution that so much of the money placed in the hands of Moses Taylor, as aforesaid, as should not be applied to the purchase of said bonds prior to the first day of August then following, should be invested in the sinking fund aforesaid; but your orator is informed and believes the said resolution was not carried into effect, and that the money remains in deposit as before; that in December, 1867, the said trustees adopted a resolution authorizing the president of said board to invest, out of the fund then in the hands of the said Taylor, a sufficient amount to purchase a certain bond of the State of Florida, payable to said Dickerson, for the principal sum of $21,000; and also
16 to invest a sufficient amount to purchase or pay for the interest on the same at a time when the bonds and credit of said State were greatly below par. And your orator further shows that the said trustees have in their possession or under their control other funds and

securities to a considerable amount, belonging to the said internal-improvement fund; that there are sums owing by said the Florida Railroad Company and other parties to the defendant The Trustees of the Internal-Improvement Fund of Florida, and liabilities thereto of members of said board of trustees who participated in the illegal and wrongful transactions aforesaid, and that the said trustees neglect and refuse to enforce the collection and payment thereof; but as to the amount and character of said last-mentioned funds, securities, sums, and liabilities, your orator is without information sufficiently accurate to enable him to say more than that to the best of his belief they are large.

17 Your orator further shows that the said trustees have illegally and fraudulently misplaced and wasted, and are now fraudulently misplacing and wasting, the lands which were vested in them by the said act of January 6th, 1855; that on the day of they donated to the Pensacola and Louisville Railroad Company all the swamp and overflowed lands for three miles on both sides of the line of said railroad; that on the 18th day of June, 1868, they passed a resolution to the effect that the Florida Canal and Inland Transportation Company should be permitted upon completion of said canal to Jupiter Inlet to purchase of said board at five cents per acre one hundred and fifty thousand acres of swamp and overflowed land belonging to said internal-improvement fund, and on the completion of said canal from Fernandina to St. Augustine the further quantity of one hundred thousand acres of the lands last specified at the said nominal price

18 of five cents per acre; that on the 26th day of October, A. D. 1867, they passed a resolution to the effect that they would grant to Hubbard L. Hart the swamp and overflowed and internal-improvement lands, embraced in the odd-numbered sections lying within ten miles of the Oclawaha River, and the lakes supplying said River, as follows, to wit: For every expenditure made by said Hart, in removing the obstructions to the navigation of the said river, the said Hart should receive the amount thereof in lands, at the price of the lands aforesaid then prevailing; provided the said expenditure should not exceed the sum of twenty thousand dollars, and although, as your orator is informed, the whole expenditure of said Hart in removing such obstructions did not exceed fifteen hundred dollars; yet they,

19 the said trustees, have ordered lands to be conveyed to him under said resolution, to the amount of twenty thousand dollars, in value, at the prevailing prices; and the said Hart has actually received thirty thousand acres of the said lands from the said trustees. And your orator further shews that, on the 28th of July, 1868, the said trustees, by resolution of that date, attempted to secure to the said Southern Inland Navigation and Improvement Company forty thousand acres or thereabouts of the said trust lands; and that about the 1st of March, 1870, they entered into an agreement with the said The New York and Florida Lumber, Land and Improvement Company, by which they undertook to convey one million one hundred thousand acres of the same, for the nominal price of ten cents an acre, and that this vast domain was and is to be selected from the best and most valuable of the said trust lands; all which will more fully appear by reference to a copy of said agreement, hereto annexed, marked Exhibit B, which your orator prays may be taken as part of this bill, with the usual liberty of reference.

20 And your orator further shews that the said last-mentioned company was incorporated by the legislature of the State of

New York, in the month of July, 1869; that it is composed of speculators, having no real capital of their own; that they are not residents of the State of Florida, nor permanently interested in the improvement or prosperity of that State; that they have an office or place of business in the city of Jacksonville, but that your orator, in frequent applications thereat, has wholly failed to find any recognized agent there, although your orator has reason to believe that one Mickles is the agent of the said company.

And your orator further shews that the said company, receiving the said lands at the said nominal price, are now actually offering them for sale in the markets of the world at from three to ten dollars per acre; all which will more appear by reference to a pamphlet entitled "Florida," published by the said company, a copy of which is hereto annexed, marked Exhibit C, which your orator prays may be taken as a part of this his bill of complaint, with the usual liberty of
21 reference.

And your orator shows unto your honors that all these acts and omissions of the said, the trustees, whether in misappropriating said monies, leaving unpaid the said past-due coupons, or in neglecting to collect the amounts due to the said fund, or in thus conveying by the million and hundreds of thousands of acres, the real estate vested in them strictly and solely for the uses of their trust, the said trustees have violated the law of said trust, and have grossly defrauded your orator, and all others similarly situated with himself, and who, he respectfully prays, may be allowed to come in as parties complainant to this bill, should they desire to do so, upon equitable terms. And as a result of some of these gross and fraudulent violations of duty by the said trustees, your orator further shows that the legislature of the State of Florida, at the first session thereof, under the constitution of the said State of 1868, created divers other corporations (some ten or twelve in number), and your orator is informed and believes that the said
22 corporations last specified were created under the expectation derived from the said previous illegal acts, of the said trustees, that the said trustes would convey to them also large quantities of said trust lands on like fraudulent terms, and this, your orator has good reason to fear will be done, unless they, the said trustees, be restrained by the order of this honorable court.

And your orator further alleges that the other parties defendant named in this bill, both private persons and corporations, had due and full notice that the acts and omissions of the said trustees as hereinbefore recited were illegal and fraudulent, and that by reason of said gross frauds, the said pledges, agreements, donations, sales, and conveyances, hereinbefore recited, are null and void as against your orator and others, the parties defrauded thereby; and that where, by virtue of the same, said parties defendant have gone into actual possession of any of said trust lands, they hold them as trustees for the payment of said past-due coupons upon the said bonds.

And your orator further shows that the said, the trustees, have
23 failed to receive and demand from the said the present owners of the said The Florida Railroad, and the said the purchasers of said road, have failed to pay, semi-annually, the sum of one-half of one per cent. on the entire amount of the bonds issued by the said The Florida Railroad Company, as required by the 2nd section of the said act of January 6th, 1855, thereby creating a sinking fund as contemplated by said act for the eventual payment of the principal of said bonds.

And your orator shows that the amount of the entire principal of

said bonds held by him is one hundred and ninety-five thousand dollars; and the amount of the past-due coupons, with interest upon the same, is about two hundred thousand dollars. That he has made repeated complaints to the said trustees of their illegal and fraudulent acts and omissions hereinbefore recited; that he has repeatedly called upon them to come to an account of the said trust fund in which he is mainly and so largely interested; that he has repeatedly requested them to pay to him the amount of the over-due coupons so held by him as aforesaid; that on the 20th day of May, in the year 1868, he ad-
24 dressed and sent a letter to Hon. D. S. Walker, president of The Board of Trustees of the said Internal Improvement Fund, which was about that time received by the said Walker, of which the following is a copy, to wit:

NEW YORK, *May 20th*, 1881.

HON. D. S. WALKER,
President Trustees Internal-Improvement Fund of Florida,

SIR: I have received your note dated 1st March. You are aware that part of the coupons held by me, which are guaranteed by the Internal-Improvement Fund, become due as far back as 1861, and the rest in regular succession every six months from that time, and as I am informed that the trustees have paid to other parties coupons guaranteed by the fund, which fell due long subsequent to some of mine, I protest against the action of the trustees in thus postponing the payments to which I am entitled, and giving preference to others not entitled to it, and desire hereby to notify you, and through you the other trustees, that I shall hold you and them personally responsible to me for the damage thus done to my rights.

I beg, also, to notify you, and through you the trustees, that I am
25 the holder of 195 bonds of $1,000 each, of the Florida Railroad Company, guaranteed by the Internal-Improvement Fund of the State of Florida, which are wholly unsatisfied, and that I call upon the trustees to perform the duty incumbent upon them under the law, of exacting from that company, or whoever may be in possesion of its road under a sale claimed to have been made by the trustees or otherwise, the due and regular payment to the sinking fund, of one-half of one per cent. every six months upon the whole amount of bonds originally issued to the Florida Railroad Company under the guaranty of the fund, whether such bonds be now outstanding or not, including any arrears of such payments due from the Florida Railroad Company, or whomsoever may now be in possession of the road. As I hold so large a portion of the bonds outstanding, the importance to me of the due and regular exactions of the payments required by the law to be made to the sinking fund is very obvious. I beg to notify you and the trustees that if they fail to perform their duty of exacting these payments, I shall look to them personally for the damage thereby resulting to me.

26 I desire, also, to inform you that I am ready and willing to sell to the trustees, to be taken by them by way of investment of funds in their hands, bonds and coupons held by me, for which the fund is responsible, at rates more favorable than those at which, as I am informed, you have taken other securities, for which the fund is not responsible.

I remain, respectfully, your obedient servant,

F. VOSE.

And that on the 1st day of December, in the year 1868, your orator addressed a letter to the defendant Harrison Reed, who was then governor of Florida and president of the trustees of the said Internal-Improvement Fund, which soon after was received by him, of which the following is a copy, to wit:

TALLAHASSEE, *December* 1, 1868.

HON. HARRISON REED,
President Trustees Internal-Improvement Fund:

SIR: I addressed a communication to your board on the 20th of May last. Not receiving any reply, you will please take notice that you will be held personally liable for any loss arising from the application of any trust property or funds in your charge to any purpose whatever, except the payment in their regular order of the over-due obligations, for which the trust itself is liable; also, for any loss from the sale of lands or other assets of the trust at a nominal price, or for payments taken in Confederate or State scrip, or anything but legal United States currency; also for any loss arising from neglect to enforce the obligations of the several railroads accepting the provisions of the internal-improvement acts.

I remain, respectfully, your obedient servant,

F. VOSE.

And your orator had well hoped that the said the trustees, and the said defendants, would have complied with such, his reasonable demands and requests, as in conscience and equity they ought to have done; but now, so it is, may it please your honors, that the said the trustees, combining and confederating with the said parties, private and corporate, hereinbefore named and described, and with divers other persons at present unknown to your orator, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendant hereto,
28 and contriving how to wrong and injure your orator in the premises, they, the said trustees, absolutely refuse and fail to comply with such requests and demands; and at times they pretend that many of the misapplications of the funds and misappropriations and wastings of the lands belonging to their trust, which are hereinbefore set out, resulted from the acts of their predecessors, for which they are in no wise accountable; whereas your orator charges, that under said act of June 6th, 1855, the said trustees constitute a corporation; that by succession they are, in their corporate capacity, accountable for the acts of said corporation, and that the trust funds in their hands are equitable assets to meet the just claims of your orator, based upon acts of corporate misfeasance or non-feasance at any time occurring; but your orator admits that the individual members of said corporation, by violation of their trust, may have rendered themselves also personally liable in damages to him, and he has accordingly made some of the predecessors of the said the trustees
29 parties defendant to this bill, for the purpose of praying a decree to that effect against them. And at other times they pretend that in pledging, donating, and conveying immense amounts of lands to divers persons and corporations for nominal prices, they are in the legitimate discharge of their duties, under the law creating their trust; that by far the largest amount of the lands so vested in them were "swamp and overflowed lands" granted to the State of Florida, with the condition that monies raised from the sale of any portion of the same

should be first applied to draining the remainder; that said monies therefore could not be legally diverted to the payment in the first place of the interest upon railroad bonds; and that the various dispositions which they have made of the lands in question have been in the legitimate interest of their improvement by draining; whereas your orator charges that in said dispositions the said trustees have drawn no distinction
30 whatsoever between the said swamp lands, and the five hundred thousand acres of land which were granted to the State of Florida expressly for the general purpose of internal improvement, without condition or qualification; that said last-mentioned lands, though fewer in acres, are by far the most valuable; that the said pledges or grantees of said lands, parties defendant to this bill, and especially the said corporation chartered in New York for the improvement of Florida, having an unlimited right of selection, either have possessed, or unless they be restrained, will possess themselves of all the said last-mentioned lands, or of all the highest, driest, and choicest of the said swamp lands; that in thus passing, and attempting to pass out of themselves the title to vast tracts of the said trust domain, the said trustees are fraudulently abdicating the trust duties imposed upon them by the said act of January 6th, 1855, and more especially by the 16th section of the same, to which your orator prays to refer in full; that the said trustees,
31 in addition to the vast tracts donated, pledged, and granted, as hereinbefore charged, have themselves been, and are now actually engaged, in selecting for themselves, and allowing their associates to select from the said trust lands at nominal or inadequate prices, receiving in payment for the same script or warrants of the State of Florida, which are below par, or coupons on said bonds, which are junior in date and in claim to those held by your orator; that the pretense that said disposition of said lands looks to the drainage of the same, is altogether fraudulent, such disposition having been made for the benefit solely of unscrupulous speculators; and your orator charges further that, in the passage of said act of January 6th, 1855, the governor of Florida had in full view the condition annexed to said grant of said swamp lands, and claimed to be, and actually was in the legitimate fulfillment of its duty in the premises. That in the development of the State by the railway system which was then
32 contemplated, the end—the "reclaiming" of the swamp lands would be most rapidly and securely attained. That there were no restrictions placed upon the exercise by the said government of discretionary power as to the mode of effecting that object, the monies resulting from the sales of portions of said lands to be "exclusively applied" to the purpose in view, only "as far as" was in its judgment "necessary." That the whole subject was exhaustively considered before the passage of said act of January 6th, 1855 (all of which will more fully appear from a "Report of the Internal-Improvement Board of Florida, submitted by the governor to both houses of the general assembly on Friday, December 22nd, 1854," a copy of which is hereunto annexed, marked Exhibit D, which your orator prays may be taken as part of this, his bill of complaint, with the usual liberty of reference, as a sequence of which report the said act was adopted. And your orator charges that, in fact, the results so ardently desired have
33 been, thereby, to a very great extent, accomplished. That the faith of the State, thus tendered by solemn legislative enactment, was accepted. That the bonds, whose coupons were thus to be paid by a board of trustees composed of the highest State functionaries, ex-officio, vested with an irrevocable title to a vast domain to be held by

them primarily, liable to the purchasers and holders of said bonds for such payment, were readily received in exchange for the iron rail, spikes, chairs, etc., which now lie upon two long lines of railway traversing the State from the Atlantic waters to those of the Gulf. And at other times they pretend that the course that they are pursuing in the management of said internal-improvement fund will enhance the value of said fund, and thus be of ultimate benefit to your orator. Whereas your orator charges that they have been, and are daily, wasting said fund; that they are rapidly destroying the security of your orator for the payment of his coupons and bonds, and that unless he be re-
34 lieved by the restraining power of this court, they will inflict upon him irreparable loss. And at other times they pretend that they have never refused to return proper accounts and reports of their actings and doings with reference to the said trust funds and lands; whereas your orator charges that for the last two years they have refused to give any account or to make any report whatsoever; that the amount which should have been collected by them from the said purchasers of the said the Florida Railroad on account of said sinking fund is from sixty to seventy thousand dollars; that the net amount from the sales of lands, judging from the general average of sales made by their predecessors in the trust, should be from one to two hundred thousand dollars; that of this large aggregate sum the said trustees have given no account whatever, although it was the habit of their predecessors to make yearly reports of their actings and doings, and monthly reports of sales, receipts and disbursements; and your orator charges
35 that their neglect in this respect had become so manifest and scandalous as to have invoked the following comment of the governor of Florida in his annual message under date of January 7th, 1869: "The reports of the surveyor-general and the board of Trustees of the Internal-Improvement Fund show the affairs of that department in rather a confused and unsatisfactory condition," etc., which will appear by reference to a copy of said message hereto annexed and marked Exhibit E, which your orator prays may be taken as a part and parcel of this his bill of complaint, with the usual liberty of reference; that as one of the results of their failure to keep regular accounts of their receipts and disbursements, and to make proper returns of the same, they have been and are in position to apply trust funds in their hands to the payment of coupons without regard to their time as fixed by priority of dates in falling due, all of which is in gross violation of section 2, 3, and 13 of said act
36 of January 6, 1855, which required said trustees to pay first the coupons oldest past due and the others in the order in which they had fallen due, the language of said act being that they should "pay out of said fund the interest "upon said bonds" from time to time as it may become due." And your orator further charges that they are also in position fraudulently to purchase, and are actually purchasing coupons not yet properly payable, and also coupons which your orator is informed and believes have been already paid, but which have been reissued and are fraudulently outstanding, making said purchases at nominal prices, and giving said coupons in exchange for lands belonging to said trust fund at great profit to themselves.

All of which said actings, doings, and pretenses of the said the trustees and the said the other parties defendant to this bill, and their confederates, tend to the manifest injury and irreparable wrong of your orator.

37 To the end, therefore, that the said the trustees and their said

confederates, may, upon their several and respective corporal oaths, full, free, direct, and perfect answers make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their respective information, hearsay, and belief, and more especially that they may answer and set forth—

1. Whether the first twelve pages of Exhibit A are not a true copy of the act "to provide for and encourage a liberal system of internal improvements in this State," approved by the governor of Florida on January 6th, 1855? Do not the remaining pages of said exhibit contain true copies of Florida acts of legislation? Is not Exhibit B a true copy of the resolutions passed by the Trustees of the Internal Improvement Fund in response to the New York and Florida Lumber,
38 Land, and Improvement Company? Is not Exhibit C a true copy of a pamphlet published by the said last-named company? Is not Exhibit D a true copy of the report of the Internal Improvement Board of Florida in manner and form as it purports to be? Are not Exhibits E and F true copies of the annual messages of Governor Harrison Reed to the legislature of Florida?

2. Were not the said defendants David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, the immediate predecessors of the acting trustees in the execution of the trust created by said act of January 6th, 1865? Is not the New York and Florida Lumber, Land, and Improvement Company a New York corporation? Has it not an office and an agent in Jacksonville, Florida? Is not the defendant Myron S. Mickles its agent in Florida; if not, who is? Has it other agents in Florida? If yea, name them? What was the amount of capital of said company at the date of its incorporation? What is the amount of its active capital now? In what does that capital con-
39 sist; if in money, where or with whom is that money deposited? How many acres of land has it selected and located in Florida under the agreement set out in Exhibit B? What amount has it paid to said trustees for such located lands, and when, where, and by whom were the payments made? Were they made in money, or in script, or what? If in script or otherwise, was such script or paper taken at par, or below par; were the lands so selected from the internal improvement lands, which consisted originally of 500,000 acres, or from the swamp or overflowed lands? If from either or from both, specify the number of acres from either, and from each, giving their localities? Is not said company offering said selected lands at from three to ten dollars per acre? Has it drained or undertaken to drain any of such lands? If yea, state how many acres, the location of the same, the character, cost, and extent of such drainage? Has not said Myron S. Mickles, both before and after commencement of his agency, selected, located,
40 and received of such trust-lands for himself personally; if yea, how many acres, and of which class of lands?

3. Have not said trustees conveyed to Hubbard L. Hart lands to the amount and value stated in the bill; if not, how much have they conveyed, and at what estimated prices? What was the character and the amount of work done by the said Hart? Who examined that work and made a report as to its character and value? How much money did said Hart expend upon it? Did he furnish an account and vouchers showing payments; if yea, let them be attached to defendants' answer; if nay, upon whose representation, as to the value of said work

and the amount of said expenditures, was the final settlement made? Were any of the lands so granted to said Hart selected from the said internal-improvement lands originally transferred for that specific purpose by Congress; if yea, what was the number of acres so granted to said Hart, and at what estimated price did he take them?

41 4. Have not the said trustees pledged or donated a large quantity of said trust-lands to the Southern Inland Navigation and Internal Improvement Company, as stated in the bill? How many acres have they so pledged or donated? What is the value of the land so donated? How many acres were selected from the original internal-improvement lands? What is the value of said last-named lands per acre?

5. Have not the said defendants so pledged or donated large quantities of said lands to the said The Pensacola and Louisville Railroad Company and to The Florida Canal and Inland Transportation Company? How many acres have they so donated, and how many of these were selected from the swamp or overflowed lands, and how many from the original internal-improvement lands, and what is the value of each per acre?

6. How much of said swamp or overflowed lands has been drained by the said trustees, or by their immediate predecessors, who are defendants named in this bill; or by the said Hubbard L. Hart, or the

42 said The Florida Canal and Inland Transportation Company or the said The Southern Inland Navigation Company, or the said The Pensacola and Louisville Railroad Company? Where are such drained lands located, and what has been the cost of such drainage?

7. How much was received per annum by the said trustees' predecessors, named in this bill, for sales of said trust lands? How much per annum by said trustees themselves? What was the entire amount of trust-lands that came into the hands of said predecessors? How many acres of swamp-land? How many of original internal-improvement land? How many acres of each of these classes of land did they turn over to their said successors, and how many acres of each class still remain in the hands of the latter subject to the execution of their trust? Did not the said predecessors keep regular accounts of their actings and doings, receipts and disbursements, and make regular monthly reports of the same? Does not the pamphlet, entitled "Documents," accompanying the governor's message, hereto appended,

43 and marked Exhibit G, contain in its pages a true copy of the report made by said trustees, under the dates therein specified? And is it not a fair specimen of the reports which the said trustees were accustomed to make? Have the incumbent trustees made any such report at any time? Have they made any report at all, whether as regards the disposition of lands, or as regards their own receipts and disbursements of funds? If yea, let copies of all such reports be appended to their answer.

8. Did not the said trustees' predecessors named in the bill receive from the sale of the said, The Florida Railroad, the sum of $323,400? If nay, how much did they receive? For how much was said road sold, and in what form were payments therefor made; and what became of the money so received? Was not a portion, and how much of the same, deposited in the hands of Moses Taylor, of New York City? If yea, what has become of that sum?

9. Did not the said trustees invest $200,000 and over of monies

44 belonging to said trust fund in Confederate bonds or script, as stated in the bill, and has not the same been a total loss? Did

they not purchase a bond or bonds of the State of Florida to the amount of more than $41,000 with monies belonging to said trust fund, and did they not buy these bonds at their par value, and at a time when the bonds and credit of the said State were greatly below par? Where are the said bond or bonds? Have they, or any portion of them, been paid? If yea, what has become of the money? Did not the said trustees in December, 1867, or at some other, and, if yea, what other time authorize the president of the said trustees to invest a portion of said trust funds at that time under the control of Moses Taylor or some other person in the purchase of a certain bond of the State of Florida, payable to Edward N. Dickerson for the principal sum of $21,000, and to pay the interest thereof in manner and form as stated in the bill? Was not the said bond bought at par value, and were not the bonds and credit of the State greatly below par at the time? What has become of said bond, and, if paid, what has become of the money? Did not said defendants lend other and large amounts of said trust fund to the State of Florida upon the security set out in the bill? Look upon the printed bill or note annexed hereto and marked Ex-
45 hibit H and say whether the trustees have not received, and do not receive, such notes in payment for trust lands. What is its value in national currency?

10. Have not said trustees now in their actual possession large amounts of money, choses in action, and securities belonging to the said trust fund? Let them specify the amount of said money, or script, or choses in action, or securities, giving an accurate description of the same.

And that the said defendants may come to a full and detailed account of all monies and property whatsoever which have at any time come into their own hands or the hands of their predecessors named herein as defendants in the execution of their trust, more especially that they may make proper accounting of assets, receipts, and disbursements since the month of June, 1868, and that the said trustees may be required, by the order and decree of this court, to pay to your orator the amount which is due upon his said cou-
46 pons to protect from waste the fund in money, choses in action, land, and other property, liable for the payment of said coupons and bonds which are not yet due; to collect from the said The Florida Railroad Company, and its present owners, one-half of one per cent. on the entire amount of bonds issued by said last-named company, under the provisions of said act of Jan'ary 6, 1855, and thus to provide a sinking fund for the eventual payment of the bonds held by your orator, and others, in accordance with its requirements; that for the better securing these ends, *to* the said trustees may be enjoined and restrained from selling, or donating, or disposing of said lands, otherwise than in strict accordance with the provisions of the sixteenth section of said act of 1855, fixing the prices, making arrangements for the drainage, and allowing pre-emptions of the same under all the restrictions of that section; that they may be restrained and enjoined from selling said lands for script of any kind, or for aught else than the current money of the United States; that they may be enjoined
47 and restrained from lending or investing, appropriating, disposing of, or using, any of the monies or property of the said trust fund, except in payment of the coupons of the bonds issued by railroads in accordance with the provisions of said act of January 6, 1855; that they may be enjoined and restrained from paying said coupons in any other mode than in the order of priority fixed by the language of sec-

tion 2, section 3, and section 13 of said act; paying first such as first became due, and the others in the order in which they fell due, making regular returns to this court of such payments, with a record of the numbers and dates of said coupons, and the cancel'ed coupons themselves as vouchers; and that the said The New York and Florida Lumber, Land, and Improvement Company, and its agent, the said Myron S. Mickles, and all others, its agents and servants, be enjoined and restrained from further action under the said agreements with, and resolutions by, the said trustees, as stated in the bill and fully set out
48 in Exhibit B, whether in selecting and locating lands embraced in said agreement, or in advertising and selling the same; and that the said other defendants named in this bill, whether persons private or corporate, who are in possession of any of the land originally belonging to said trust-fund, and pledged and donated and wasted in manner set forth in said bill, may be enjoined and restrained from selling, disposing of, or in anywise intermeddling with the same until the further order and decree of this court; and that the said New York & Florida L., L., and I. Company and the last-named defendants may also come to an account with your orator for the proceeds which they may have already received from the sale of any portion of said land; and that the said trustees may be enjoined to pay to your orator all damages sustained by him by means of the premises; that a receiver may be appointed of the monies and funds of the said trust-fund with all
49 necessary and proper directions; and that your orator may have such other, further, or different relief in the premises, as to the court shall seem equitable and just, with the costs of the action.

May it please your honor to grant unto your orator the writ of injunction of the United States of America, issuing out of and under the seal of this court, directed to each of the said defendants, their successors, as trustees, their counsellors, solictors, attorneys, and agents, enjoining and restraining each of them in manner and form as hereinbefore prayed for, and that a temporary injunction to the same effect may be directed as aforesaid to the said trustees, and to the said The New York and Florida Lumber, Land, and Improvement Company, and to the said Myron S. Mickles, and all others, its agents and servants, enjoining and restraining them as aforesaid, until further order of this court:

May it please your honor to grant to your orator the writ of subpœna of the United States of America, to be directed to Harrison
50 Reid, Robert H. Gamble, A. R. Meek, Frank W. Webster and S. B. Conover, Trustees of the Internal Improvement Fund of Florida, John S. Adams and "The Trustees of the Internal Improvement Fund of Florida," and also to David S. Walker, C. H. Austin, Hugh H. Corley, John Beard, John B. Galbraith, The Pensacola and Louisville Railroad Company, The Florida Canal and Inland Transportation Company, The Southern Inland Navigation Company, The New York and Florida, Lumber, Land and Improvement Company, Myron S. Mickles and Hubbard L. Hart, thereby commanding them, and every of them at a certain day, and under a certain pain, therein to be specified, personally to be and appear in this honorable court, and then and there to answer, all and singular, the premises, and to stand to, perform, and abide such order and decree therein as to this court shall seem meet.

And your orator will ever pray, &c.

JACKSON, LAWTON & BASINGER.
BISBEE & ARCHIBALD,
Solicitor and of Counsel.

51 NOTE.—The said defendants, who are now trustees or who have been trustees of the Internal Improvement Fund of Florida, are required to answer all the questions in this bill numbered from "1 to 10" both inclusive. The said The New York and Florida Lumber, Land, and Improvement Company, and the said Myron S. Mickles will answer the interrogatories numbered 1 and 2. The said Hubbard L. Hart will answer the interrogatories number 3 and 6. The Southern Inland Navigation and Improvement Company, will answer interrogatories numbered 4 and 6. The Pensacola and Louisville Railroad Company, will answer interrogatories numbered 5 and 6.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

Francis Vose, the complainant in the foregoing bill of complaint, being duly sworn, says that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is
52 true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

F. VOSE.

Subscribed and sworn to this 3rd day of November, 1870, before me.
J. E. TOWNSEND,
Clk.

(Indorsed:) In the United States circuit court for the northern district of Florida. Francis Vose, complainant, and Harrison Reed et al. Trustees of The Internal Improvement Fund of Florida, et al. defendant. Bill for discovery, injunction & relief. Filed Nov. 3, 1870. J. E. Townsend, cl'k. Jackson, Lawton & Bassinger, complainant's solicitors. Bisbee & Archibald, comp't's sol.

53 In United States circuit court, northern district of Florida.

FRANCIS VOSE,
vs.
HARRISON REED ET AL., TRUSTEES IN'T Imp. Fund et al.
} Bill for discovery, injunction, discovery & relief.

Please take notice that a motion will be made for an injunction against defendants in the above-entitled cause, at the time and place specified in the order of his honor W. B. Wood, a judge of said court, dated at Montgomery, Oct. 31st, 1870, upon the grounds appearing in the bill of complaint filed in said cause. A substantial copy of said bill, with a copy of the said order, is herewith served upon you.

JACKSON, LAWTON & BASSINGER, &
BISBEE & ARCHIBALD,
Comp'ts' Solicitors.

To HARRISON REED ET AL.,
Trustees Int. Imp. Fund et al.

54 DEPT. MARSHAL'S OFFICE,
Northern District of Florida.

Came to hand Nov. 4th, 1870, and served the same by leaving a true copy thereof, and a copy of the bill of complaint, and of the order of Judge W. B. Woods in said court, dated at Montgomery, Ala., Oct. 31, 1870,

on Harrison Reed, governor of the State of Fla., by leaving a copy at his place of business with E. C. Weeks, & on F. W. Webster, surveyor-general, State of Florida, by leaving a copy at his place of business with W. F. Webster, & on S. B. Conover, State treasurer of the State of Fla., by leaving a copy at his place of business with T. B. Archer, and on R. H. Gamble personally, at Tallahassee, Fla., this 5th day of Nov., 1870, & explained to them the contents of the within bill & order of his Hon. W. B. Woods.

GEO. E. WENTWORTH,
U. S. Marshal.
Per S. S. TIBBITTS, *Dep't.*

55 (Indorsed:) In United States circuit court, northern district of Fla. Francis Vose vs. Harrison Reed et al., Trustees Int. Imp. Fund et al. Notice of motion for injunction. Filed Nov. 8, 1870. J. E. Townsend, Jackson, Lawton & Bassinger, & Bisbee & Archibald, compl'ts' solicitors.

56 In the United States circuit court, northern district of Florida

FRANCIS VOSE, COMPLAINANT,
and
HARRISON REED ET AL., TRUSTEES OF THE Internal Improvement Fund of Florida, et al., defendants.

The defendant "The Florida Improvement Company," complained against in said bill as "The Florida Lumber, Land & Improvement Company," by protestation not confessing or acknowledging any of the matter and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demure thereto, and for cause of demurrer thereto, that the complainant *may* not in and by his said bill made such a case against this defendant, as doth or ought to entitle him to the injunction and relief as is thereby sought and prayed foragainst this defendant.

Wherefore and for divers other errors & imperfections this de-
57 fendant demands the judgment of this court, whether it shall be compelled to make further or other answers thereto, & prays to be hence dismissed with reasonable costs in this behalf sustained.

A. W. STONE,
Sol. for The Florida Improvement Co.

I hereby certify that the foregoing demurrer, in my opinion, is well founded in law.

A. W. STONE,
Sol. for The Florida Improvement Co.

58 United States of America, southern district of Georgia.

John J. Merritt, vice-president of the Florida Improvement Company, formerly known as The Florida Lumber, Land, and Improvement Company, being duly affirmed, saith that the demurrer aforesaid is not interposed for delay.

JOHN J. MERRITT.

Subscribed and affirmed to before me this 16th day of November, 1870.

FRANK S. HESSELTINE,
United States Commissioner for So. Dist. of Geo.

(Indorsed:) In the 5th c. court of U. S., southern dist. of Florida. Francis Vose, complainant, and Harrison Reed et al., defendants. Demurrer. Filed Dec. 5th, 1870. J. E. Townsend, cl'k. A. W. Stone.

59 FRANCIS VOSE, COMPLAINANT,
and
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida et al., defendants.

In the circuit court of the United States for the northern district of Florida. In equity.

To the honorable the judges of the circuit court of the United States for the northern district of Florida:

Francis Vose, complainant, in the above-entitled cause, now comes & for amendment to the bill of complaint filed in said cause, shows unto your honors, that since the filing of the same he has ascertained that the corporation described in the said bill as the New York & Florida Lumber, Land, & Improvement Company, created under the laws of the State of New York, also exists & has been created under the laws of Florida, a body corporate with the name of the Florida Improvement Company; that said company is composed of a number of persons who have associated themselves together & become incorporated for the transaction of business under provisions of the act of the general assembly of Florida, approved on the 8th day of August,
60 1868; that they are a body of persons acting as a corporation under said act; and that their chief place of business is at Jacksonville in said State of Florida; and that the said The Florida Improvement Company is a corporation created by and existing under the laws of the State of Florida, & is a resident & a citizen of said State, & has its chief place of business in the northern district thereof.

And your orator further shows unto your honors that he has ascertained, is informed, & believes that since the filing his said bill of complaint in the above-entitled cause, the said The Trustees of the Internal Improvement Fund of Florida by a deed of conveyance bearing date the first day of December, in the year eighteen hundred & seventy, have undertaken to convey & transfer a very large amount of the lands vested irrevocably in them by the said the internal-improvement act of 1855, to a company created by & existing under the laws of the said State of Florida, & known by the corporate name of the Great Southern Railway Company; that said conveyance or transfer is fraudulent,
& in violation of the trust created in them by said act of 1855,
61 and in derogation of your orator's rights as a cestui que truste; and your orator prays that the said The Florida Improvement Company may be made a party to said bill of complaint in its character as a Florida corporation, & under the description given of it in this your orator's amendment to said bill of complaint, & that the writ of injunction as prayed in said bill, and to the end and effect as prayed for, may be issued to the said The Florida Improvement Company; and your orators further prays that the said. The Great Southern Railway Company may be made a party to said bill of complaint, & may be required to answer the same, & more especially the interrogatories numbered 4 & 5 in said bill, & also the further interrogatory.

ADDITIONAL INTERROGATORY. Did not the said Trustees of the Internal-Improvement Fund pledge, donate, transfer, or convey to the said the Great Southern Railway Company, on or about the first day of December, 1870, a large amount of land, conveyed in trust to the said trustees by the act of 1855? If yea, how many acres were so conveyed?

62 Where are said acres located? Do said acres belong to the 500,000 acres granted to the State of Florida by the United States specifically for the purposes of internal improvement? Or do they belong to the lands known as swamp or overflowed lands? And if to both classes name the number of acres belonging to each class. How much is the said company to pay to said trustees for said lands per acre? How much has already been paid, & to whom was it paid? State fully the consideration. Is either one or more of said trustees stockholders, or interested in said company? If yea, name the stockholders & specify the interest.

May it please your honor to grant to your orator the writ of subpœna of the United States of America to be directed to the said corporations under the corporate names set forth in this amendment to his said bill of complaint, commanding them to appear & to answer said bill under the pains, & penalties, & in manner & form therein set forth & prayed for.

H. BISBEE, JUN'OR.
JACKSON, LAWTON & BASSINGER,
Solicitors for Complainant.

NOTE.—The Great Southern Railway Company is required to answer interrogatories No. 4 & No. 5, of original bill, & also interrogatory additional in amended bill.

63 UNITED STATES OF AMERICA,
Northern District of Florida:

You, Francis Vose, do solemnly swear that the statements in the foregoing amendment to bill, so far as they concern your own act or deed, are true; so far as they concern the act or deed of others you believe them to be true, so help you God.

F. VOSE.

Sworn to and subscribed before me this Dec. 6th, 1870.
J. E. TOWNSEND, *Clk.*

(Indorsed:) In the United States circuit court for the northern district of Florida. Francis Vose, compl't, & Harrison Reed, et al, d'f'ts. Amended bill. Filed Dec. 6, 1870. J. E. Townsend, cl'k. H. Bisbee, jun'or. Jackson, Lawton, & Bassenger, compl'ts' solicitors.

64 UNITED STATES OF AMERICA,
Southern District of Georgia:

Before me, the undersigned, a commissioner for the United States for the southern district of Georgia, personally appeared John J. Merritt, the vice-president of the company known as The Florida Improvement Company originally known as The New York and Florida Lumber, Land and Improvement Company, who, being duly affirmed, deposeth and saith, that on the 11th day of November, A. D. 1870, in the city of Brooklyn, State of New York, he received a copy of what purported to be a bill filed in the United States circuit court for the northern district of Florida, in which bill Francis Vose is complainant, and Harri-

son Reid et al., Trustees of The Internal-Improvement Fund of Florida et. al., are the defendants. That the same was forwarded to him by Miron S. Mickles, a resident of Florida, the same having been handed to him by the marshall of Florida, as I am informed.

That immediately on the receipt thereof he started for Sa-
65 vannah, Ga., arriving there on the evening of the 14th of November, 1870; that he counseled with A. W. Stone, attorney-at-law, and practicing lawyer in Savannah.

That as the vice-president of said company and principal manager thereof, he is not prepared to answer said bill, even, if by the terms of the order he was required so to do. Deponent is a citizen and resident of New York, and has had no notice, except as before stated; that Miron S. Mickles, from whom he received what purported to be a copy of the bill, unaccompanied by any exhibits referred to in said bill, is not the gen'l agent of said company, but an employee thereof, and has no interest in said company. Deponent therefore submits to the court that no legal service has ever been perfected upon said company and that he is not obliged to reply to or answer said bill.

Deponent further submits to the court that he is not, nor is his company, a citizen of Georgia.

Deponent further submits to the court that he has no legal or
66 sufficient notice of the filing of said bill, and is not bound by law to plead, answer, or demur, in Georgia.

JOHN J. MERRITT.

Subscribed and affirmed to before me this 16th day of November, 1870.

FRANK S. HESSELTINE,
United States Commissioner, So. Dist. of Geo.

(Indorsed:) Francis Vose, compl't, vs. The Trustees of Internal Im. Fund of Florida et al., def'ts. Affidavit of vice-president of The Florida Lumber, Land & Improvement Co. Filed Dec. 6, 1870. J. E. Townsend, cl'k.

67 In the United States circuit court for the northern district of Florida.

FRANCIS VOSE *vs.* HARRISON REED ET AL., TRUTEES OF THE Internal-Improvement Fund of Florida, et al.	Bill for injunctions and relief.

Know all men by these presents that we, Francis Vose, principal, and Calvin Le Robinston and N. N. Noeg, sureties, are held and firmly bound unto the Trustees of the Internal-Improvement Fund of Florida, and other persons and corporations who are defendants in the above-entitled cause, in the sum of twenty-five thousand dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, and adminstrators jointly and severally, firmly by these presents sealed with our seals and dated this sixth day of December, A. D. 1870.

The condition of this obligations is such that whereas the above bounder Francis Vose, the complainant in the above-entitled suit has this day obtained a writ of injunction against defendants therein according to the prayer of the bill of complaint filed therein from the
68 circait court of the United States for the northern district of

Florida: Now if the above bounder obligors shall will and truly pay all the damages, which the said defendants, against whom the said writ of injunction has issued, shall sustain by reason of the improprely granting of the said writ of injunction, then these presents to be null and void; otherwise to remain in full force and effect.

F. VOSE. [L. S.]
C. L. ROBINSON. [L. S.]
H. H. HOEG. [L. S.]

Approved this 7th Dec., 1870.

J. E. TOWNSEND, *Clk.*

69 (Indorsed:) In United States circuit court northern district of Florida. Francis Vose, complainant, vs. Harrison Reed et al., Trustees of the Internal-Improvement Fund of Florida, et al., defendants. Injunction bond. Filed Dec. 7th, 1870. J. E. Townsend, cl'k.

70 In the fifth circuit court of the United States for the northern district of Florida.

To the judge of the United States circuit court for the northern district of Florida:

The separate answer of David S. Walker to the bill of complaint held against himself and others, in this court, by Francis Vose, respectfully showeth as follows:

1st. This respondent, in answer to the first interrogatory of complainant bill, says he has not seen the exhibits mentioned in said interrogatory, and cannot say whether they are true copies or not, but presumes they are.

2nd. The defendant has no information which will enable him to answer the second interrogatory.

3d. This defendant cannot answer the third interrogatory, but respectfully refers to the present members of the Board of Internal Improvement, and the books and files of said board, to which that defendant has not had accept for the information sought.

4th. This defendant is not able to answer the question in the fourth interrogatory.

5th. This defendant is not able to answer the question in the fifth interrogatory.

71 6th. This defendant is unable to answer the questions in the sixth interrogatory.

7th. Without access to the books and papers on file in the office of the Trustees of the Int. Imp. Fund, this defendant is not able to answer the seventh intorrogatory.

8th. In answer to the 8th interrogatory, this defendant says he cannot say how much the trustees received from the sale of said Florida Railroad, without reference to the books in possession of the present trustees, but it was a sum sufficient to purchase all the bonds (first mortgage) that had ever been *opened on* said road at 20 cents on the dollar. These defendants' recollection of the facts connected with the sale of said road, is as follows:

Persons owning more than two-thirds of said first-mortgage bonds desired that the road should be sold. The trustees objected that they feared the road, in the then depressed monetary condition of the country, would not sell for enough to retire all the first-mortgage bonds that had been issued on it, and on the further ground that all the holders of

said bonds should be equal participants in any benefits that might arise from said sale. To obviate these objections, those desiring the
72 sale stipulated with the trustees that the road should sell for a sum at least sufficient to retire all the first-mortgage bonds at 20 cents on the dollar; that being their then estimated market value, and that they would immediately after the sale sell to the trustees at least two-thirds of all said bonds at said price of 20 cents on the dollar; and moreover that all the holders of said bonds should have the right to come in and be joint purchasers of said road, if they should so desire, on equal terms.

The trustees considered that this arrangement would secure the rights of all, and proceeded to sell the road. This defendant does not recollect the sum for which the road was sold, but knows it was a sum to purchase all the first-mortgage bonds that ever had been issued on said road at 20 cents on the dollar. Immediately after said sale the trustees purchased for cancellation more than two-thirds of said bonds at 20 cents on the dollar, and deposited the balance of said purchase-money with Moses Taylor, in New York, to take up for cancellation the balance of said bonds. Defendant is informed and believes that said Taylor has purchased nearly or not quite all the balance of
73 said bonds at said rate, except those held by the complainant in this cause, who has persistently refused either to become a joint purchaser on equal terms with the original purchasers of said road or to take his pro rata *than* of the proceeds of said sale, though often urged to do either the one or the other.

9th. This defendant cannot answer satisfactor'y the ninth interrogatory without access to the records of the Int. Imp. Board. This defendant was not a member of the board during the late war. This defendant became a member of the board in the latter part of the year 1865. The only State board this defendant remembers about the negotiation is in the State board for $21,000 mentioned as payable to Edward H. Dickerson. The Trustees of the Int. Imp. Board did authorize Mose Taylor to purchase that bond at par with a portion of the proceeds of the sale of said road, which they had placed in his hands to take up said bonds, but this was not till long after said Vose had repeatedly refused to surrender his bonds, and take his pro rata *than* of said proceeds. Said Edward H. Dickerson had loaned $21,000 to the State at par on said bond, and the Trustees of the Int. Imp. Fund took it back from him at par. This was the only bond of the State of
74 Florida that this defendant remembers to have negotiated during the two years and a half he was governor. It bore seven per cent. interest, and was negotiated at par. Said Dickerson delivered to respondent, as governor, $21,000 in greenbacks, and this respondent delivered to said Dickerson said bond for $21,000. The State was but little in debt, its means were ample, its government was economical, and, at that time, honest, and there was no reason why its credit should not be as good as that of any other State.

10th. In answer to the 10th interrogatory this defendant says he does not know what amount of money, choses in action, and securities belonging to said trust fund are now in possession of the trustees of said fund.

Having fully answered, this defendant prays to be *heard*, dismissed with his costs, &c.

D. S. WALKER.

TALLAHASSEE, FLA., *Dec. 30th*, 1870.

This day personally appeared before me David S. Walker, who, being duly sworn, says that the within answer is true in substance & fact.

PHILIP WALTER,
Clerk Circuit Court U. S., Fifth Judicial Circuit Northern Dist. of Fla.

75 (Indorsed:) Answer of D. S. Walker. Filed **Dec. 31st, 1870.** J. E. Townsend, cl'k. (4.)

76 UNITED STATES OF AMERICA,
State of Florida:

In the fifth circuit court of the United States for the northern district of Florida.

To Harrison Reed, Robert H. Gamble, Alvin R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, The Trustees of the Internal Improvement Fund of Florida, and to their successors, The Florida Improvement Company and its agent, Myron S. Mickles, and all others, its agents, and servants in the said State of Florida:

Whereas it appears to me, W. B. Woods, judge of the courts of the United States for the fifth judicial circuit, that Francis Vose, a resident and citizen of the State of New York, brings his bill of complaint in the circuit court of the United States for the northern district of Florida, in which he shows that he is the owner of a large number of bonds issued by the Florida Railroad Company with a large number of coupons upon them, which are past due, and which you the said trustees named above have refused to pay, in violation of an act passed
77 by the legislature of Florida on the 6th day of January, in the year 1855, irrevocably trusting in you 10,500,000 acres of land in trust, to make sale of the same according to the provisions of said act, and from the proceeds of such sales to pay the coupons on such bonds as they should fall due, but that instead thereof you, the said trustees, are misapplying the funds belonging to the said trust; are improperly and fraudulently misappropriating the same and selling and transferring said lands in amounts, in manner, and for considerations that are wholly inconsistent with and violative of the provision of said act; that you are donating and disposing of the same for merely nominal prices and for scrip and State warrants, not recognized as the lawful currency of the United States; more especially and recently have entered into an agreement with you, the said The Florida Improvement Company, and you, the said Myron S. Mickles, are the agent of said company, by which said agreement 1,100,000 acres of land belonging to said trust, to be selected from the entire trust domain, are transferred to the said New York and Florida Lumber, Land, and Improvement Company, at the nominal price of ten cents per acre, and that
78 you, the said Mickles and others, the agents and servants of said company, are selecting, locating, advertising, and selling the said lands, and that thus you, the said trustees, are wasting and destroying the land and the fund so vested in you by said act of 1855, and by the foregoing and by other lawless and fraudulent acts are diverting the monies which have come and are coming into your hands by virtue of said trust from the payments of said coupons in the order in which they fell due.

And whereas the said complainant, by his said bill, prays that the writ of injunction be issued restraining you, the above-named parties, from the acts which are therein complained of—

I do, therefore, in the name and by the authority of the United States of America, strictly enjoin and command you, the said Harrison Reed, Robert H. Gamble, Alvin R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the trustees of the Internal Improvement Fund of Florida, and your successors, under penalty of attachment for contempt and a pain of ten thousand dollars for each act notative of this injunction; that you and each and all of you, both in your individual and collective capacity, do desist from selling or donat-
79 ing or disposing of the land belonging to said trust otherwise than in strict accordance with the provision of said act of 1855, fixing the price and allowing pre-emptions of the same in obeydienc' to all the restrictions of that act; that you desist from selling said land for scrip or State warrants of any kind or for ought else than current money of the United States; that you desist from lending or investing, appropriating, disposing of, or using any of the moneys or property of said trust funds, except in applying them in the creation of the sinking fund, provided by said act of 1855, and applying them in strict accordance with the provisions of that act when said monies properly belong to said sinking fund or in payment of the coupons of said bonds when said monies have proceeded or shall proceed from the sale of said lands, and that you desist from paying said coupons in any other mode than in the order of their priority fixed by the date of their coming to maturity, paying first such as first become due and the others in the order in which they fell due; and I do enjoin you further and specially that you desist and refrain from any and all actions in executing and carrying out the agreement between you and the said The Florida Improvement Company, described in said agreement, The New York and
80 Florida Lumber, Land, and Improvement Company, which said agreement is embodied in the resolution passed by you, the said trustees, on the first day of March, in the year eighteen hundred and seventy, or thereabouts, by which said agreement you, the said trustees, give and grant to the said company, their successors and assigns, authority to select and locate from the lands belonging to the Internal Improvement Fund one million one hundred thousand acres of said land at the rate of and price of ten cents per acre upon terms and conditions which are therein set forth.

And I do enjoin and command you, the said Florida Improvement Company, and you, the said Myron S. Mickles and others, the agents and servants of the said The New York and Florida Lumber, Land, and Improvement Co., that under the penalty and pain hereinbefore set out you desist from further action under the said agreement with the said trustees, whether in selecting or locating land embraced in said agreement, or in advertising and selling the same, or in disposing of or intermed'ling with the proceeds which have resulted from the sale of any portion of the same further than to retain them safely, subject to the further order and decree of this court.

Witness the honorable Salmon P. Chase, Chief Justice of the
81 Supreme Court of the United States, and the seal thereof, at the city of Jacksonville, in said district, this 8th day of December, A. D. one thousand eight hundred & seventy.

J. E. TOWNSEND, *Clerk.*

82 (Indorsed:) In the United States circuit court for the northern

dis't of Fla. Francis Vose vs. Harrison Reed et al. Writ of injunction. Issued Dec. 8th, 1870. Filed Jan'y 13th, 1871. J. E. Townsend, cl'k. H. Bisbee, jr., Jackson, Lawton & Bassinger, complainant's solicitors.

Served a copy of this writ of injunction upon John S. Adams, secretary of the Trustees of the Internal-Improvement Fund of Fla., at Jacksonville, Fla., this the 17th Dec., A. D. 1870.

GEO. E. WENTWORTH,
U. S. Marshall,
Per S. CONANT, *Dep'ty.*

Served a copy of the within injunction upon Frank W. Webster, Simon B. Conover, and Robert H. Gamble, trustees of the Internal Improvement Fund of Fla., at Tallahassee, in said dis't, this the 10th Dec., 1870.

GEO. E. WENTWORTH,
U. S. Marshall,
Per S. CONANT, *Dep'ty.*

Served a copy of the within injunction upon Myron S. Mickels, agent of the New York Land, Lumber, and Improvement Company, at Jacksonville, this the 9th Dec., 1870.

GEO. E. WENTWORTH,
U. S. Marshall,
Per S. CONANT, *Dep'ty.*

Served a copy of the within injunction upon Harrison Reed, governor of the State of Fla., and president of board of Internal Fund of Fla., at Tallahassee, in said dis't, this the 13th of Dec., 1870.

GEO. E. WENTWORTH,
U. S. Marshall,
Per S. L. TIBBITTS,
Dep'ty U. S. Marshall.

83 The President of the United States of America to Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, John S. Adams, trustees of the Internal-Improvement Fund of Florida; David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, former trustees of the Pensacola and Louisville Railroad Company, the Florida Canal and Inland Transportation Company, the Southern Inland Navigation Company, the New York Lumber, Land, and Improvement Company, Myron S. Mickles, the agent of the last-named company, and Hubbard S. Hart, citizens and resident' of the State of Florida, greeting:

You are hereby commanded and strictly enjoined that, laying aside all business, and, notwithstanding any excuse, that you be and appear before the judge of the circuit court of the United States, 5th circuit and northern district of Florida, on the first Monday in January (being the 2nd day thereof) next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis Vose, a citizen and resident of the State of New York, and to do further and receive what said court shall have considered in that behalf; and this you are not to omit, under a penalty upon you of one thousand dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of said court, this 8th day of
84 December, A. D. one thousand eight hundred and seventy.

J. E. TOWNSEND, *Clerk.*

H. BISBEE, JR.,
JACKSON, LAWTON & BASSINGER,
Complainant's Solicitors.

Served a copy of the within subpœna on Harrison Reed, governor of the State of Florida and president of the Trustees of Internal-Improvement Fund of Fla., in said dist., at Tallahassee, Fla., this the 13th day of Dec., 1870. Served a copy of the within subpœna on ex-Gov. D. S. Walker and John Beard, at their place of residence, at Tallahassee, Fla., this the 13th day of Dec., 1870.

Served a copy of the within subp. upon H. S. Hart, at Palatka, Fla., and also upon Dr. Morajne, president of the Fla., Canal and I'land Transportation Company, at Palatka, Fla., this the 29th day of Dec., 1870.

G. E. WENTWORTH,
U. S. Marshal,
Per BINES GIBSAR, *Deputy.*

Served a copy of the within subpœna upon Hugh A. Corley, at Leesburg, Fla., this the 14th Jan'y, 1871.

GEO. E. WENTWORTH,
U. S. Marshal,
Per S. L. TIBBITTS,
Dep't. U. S. Marshal.

85 Served a copy of the within subp. upon Robert H. Gamble, Simon L. Conover, and Frank W. Webster, trustees of the Internal-Improvement Fund of Fla., at Tallahassee, in said dist,, this the 10th Dec., 1870.

Served a copy of the within subp. upon Myron S. Mickles, agents of the New York Land, Lumber, and Improvement Company, at Jacksonville, said dist., this the 9th Dec., 1870.

G. E. WENTWORTH,
U. S. Marshal,
Per S. CONANT, *Deputy.*

Served a copy of the within subpœna upon J. S. Adams, secretary of the Trustees of the Internal-Improvement Fund of Fla., at Jacksonville, Fla., this the 17th Dec., 1870.

GEO. E. WENTWORTH,
U. S. Marshal,
Per S. CONANT, *Deputy.*

(Indorsed:) No. 1. In the United States circuit court, 5th circuit, northern district of Florida. Francis Vose vs. Harrison Reed et al. Subpœna in chancery issued 8th Dec., 1870; returnable 2d Jan'y, 1870. Returned & filed 13th Jan'y, 1871. J. E. Townsend, cl'k. H. Bisbee, jr., Jackson, Lawton and Bassinger, compl't's solicitors.

86 FRANCIS VOSE, COMPLAINANT, *and* HARRISON REED ET AL., DEFENDANTS. } In equity.

In the U. S. circuit court for the northern district of Florida.

Exceptions taken by the said complainant to the insufficient answer of D. S. Walker, one of the said defendants, to the said complainant's bill of complaint.

(1.) For that the said defendant D. S. Walker hath not, to the best and utmost of his knowledge, remembrance, information and belief answered and set forth whether the Exhibit A appended to said bill of complaint does not contain true copies of the acts of Florida legislation, of resolutions passed by the said The Trustees of the Internal-Improvement Fund, and of other deeds and documents referred to in said bill, and specifically enquired about in the first interrogatory, as follows:

87 1. Whether the first twelve pages of Exhibit A are not a true copy of the act "to provide for and encourage a liberal system of internal improvements in this State," approved by the governor of Florida on January 6th, 1855? Do not the remaining pages of said exhibit contain true 'opies of Florida acts of legislation? Is not Exhibit B a true copy of the resolutions passed by the Trustees of the Internal-Improvement Fund in response to the New York and Florida Lumber, Land, and Improvement Company? Is not Exhibit C a true copy of a pamphlet published by the said last-named company? Is not Exhibit D a true copy of the report of the Internal-Improvement Board of Florida, in manner and form as it purports to be? And are not Exhibits E and F true copies of annual messages of Governor Harrison Reed to the legislature of Florida? Although it is obvious that by the exercise of the most ordinary diligence he could have procured the information sought.

88 (2.) For that the said defendant hath not in manner aforesaid answered and set forth whether the said defendants named in the first lines of the second interrogatory, as follows: 2. Were not the said defendants, David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, the immediate predecessors of the acting trustees, in the execution of the trust created by said act of January 6th, 1855; were or were not such immediate predecessors? although it is apparent that he must be possessed of the information sought.

(3.) That the said defendant hath not in manner aforesaid answered and set forth whether the said trustees did not, in the year 1847, by re'olution and subsequent order mentioned in said bill of complaint, grant to Hubbard L. Hart, under the circumstances as also mentioned therein, large amounts of land, & has not answered in manner aforesaid the various questions embraced in the third interrogatory, as follows:

89 (3.) Have not the said trustees conveyed to Hubbard L. Hart lands to the amount and value stated in the bill? If not, how much have they conveyed; and at what estimated prices? What was the character and amount of work done by the said Hart? Who examined that work and made a report as to its character and value? How much money did said Hart expend upon it? Did he furnish an account and vouchers showing payments? If yea, let them be attached to defendant's answer. If nay, upon whose representation, as to the value of said work, and the amount of said expendatures, was the final settle-

ment made? Were any of the lands so granted to the said Hart, selected from the said the internal-improvement lands, originally transferred for that specific purpose by Congress? If yea, what was the number of of acres so granted to the said Hart, and at what estimated price did he take them? Although it appears from the allegations of the said bill, and from other parts of his (the said defendant's) said an-
90 swer, that the said defendant was president of the said The Trustees of the Internal-Improvement Fund from the latter part of the year 1865 to the month of June in the year 1868; that the information sought relates to his own acts and the acts of the body over which he presided; and that he has exercised no diligence whatsoever in recalling or in procuring it.

(4.) For that the said defendant hath not, in manner aforesaid, answered the matters specifically enquired about in interrogatories numbered fourth, fifth, sixth, & seventh, in said bill of complaint, as follows:

4. Have not the said trustees pledged or donated a large quantity of said trust lands to the Southern Inland Navigation and Internal Improvement Company, as stated in the bill? How many acres have they so pledged or donated? What is the value of said land so donated? How many acres were selected from the original internal improvement lands? What is the value of said last-named lands per acre?

91 5. Have not the said defendants so pledged or donated large quantities of said lands to the said The Pensacola and Louisville Railroad Company, and to the Florida Canal and Inland Transportation Company? How many acres have they so donated? And how many of these were selected from the swamp or overflowed lands, and how many from the original internal improvement lands, and what is the value of each per acre?

6. How much of the said swamp or overflowed lands has been drained by the said trustees, or by their immediate predecessors, who are defendants named in this bill, or by the said Hubbard L. Hart, or the said The Florida Canal and Inland Transportation Company, or the said The Southern Inland Navigation Company, or the said The Pensacola and Louisville Railroad Company? Where are such drained lands located, and what has been the cost of such draining?

7. How much was received per annum by the said trustees' pre-
92 decessors, named in this bill from sales of said trust lands? How much per annum by the said trustees themselves? What was the entire amount of trust lands that came into the hands of said predecessors? How many acres of swamp land? How many of original internal improvement land? How many acres of each of these classes of lands did they turn over to their successors? And how many acres of each class still remain in the hands of the latter subject to the execution of their trust? Did not the said predecessors keep regular accounts of their actings and doings, receipts and disbursements, and make regular monthly reports of the same. Does not the pamphlet entitled "Documents" accompanying the governor's message *message* hereto appended and marked Exhibit G, contain in its pages a true copy of the report made by said trustees, under the dates therein specified? And is it not a fair specimen of the reports which the said trustees were accustomed to make? Have the incumbent
93 trustees made any such report at any time? Have they made any report at all, whether as regards the disposition of lands or as regards their own receipts and disbursements of funds? If yea,

to insert herein, with words to charge them as parties defendant hereto, and contriving how to wrong and injure your orator in the premises, they, the said trustees, absolutely refuse and fail to comply with such requests and demands; and at times they pretend that many of the misapplications of the funds and misappropriations and wastings of the lands belonging to their trust, which are hereinbefore set out, resulted from the acts of their predecessors for which they are in no wise accountable. Whereas your orator charges that under said act of June 6th, 1855, the said trustees constitute a corporation; that by succession they are, in their corporate capacity, accountable for the acts of said corporation; and that the trust funds in their hands are equitable assets to meet the just claims of your orator based upon acts
101 of corporate misfeasance or non-feasance at any time occurring; but your orator admits that the individual members of said corporation, by violation of their trust, may have rendered themselves also personally liable in damages to him, and he has accordingly made some of the predecessors of the said the trustees parties defendant to this bill, for the purpose of praying a decree to that effect against them; and at other times they pretend that in pledging, donating, and conveying immense amounts of lands to divers persons and corporations for nominal prices they are in legitimate discharge of their duties under the law creating their trust; that by far the largest amount of lands so vested in them were "swamp and overflowed lands" granted to the State of Florida with the condition that monies raised from the sale of any portion of the same should be first applied to draining the remainder; that said monies
102 therefore, could not be legally diverted to the payment, in the first place, of the interest upon railroad bonds, and that the various dispositions which they have made of the lands in question, have been in the legitimate interest of their improvement by draining; whereas, your orator charges that in the said dispositions, the said trustees have drawn no distinction whatsoever between the said swamp lands and the five hundred thousand acres of land which were granted to the State of Florida expressly for the general purpose of internal improvement, without condition or qualification; that said last mentioned lands, though fewer in acres, are, by far, the most valuable; that the said pledgees or grantees of said lands, parties defendant to this bill, and especially the said corporation, chartered in New York for the improvement of Florida, having an unlimited right of selection, either have possessed or, unless they be restrained, will possess themselves of
103 all the said last-mentioned lands, or all of the highest, driest, and choicest of the said swamp lands; that in thus passing and attempting to pass out of themselves the title to vast tracts of the said trust domain, the said trustees are fraudulently abdicating the trust duties imposed upon them by the said act of January 6th, 1855, and more especially by the 16th section of the same, to which your orator prays to refer in full; that the said trustees, in addition to the vast tracts donated, pledged, and granted, as hereinbefore charged, have themselves been, and are now actually engaged, in selecting for themselves, and allowing their associates to select, from the said trust-lands, at nominal or inadequate prices, receiving in payment for the same scrip, or warrants of the State of Florida, which are below par, or coupons on said bonds, which are junior in date and in claim to those held by your orator; that the pretense that said disposition of said lands looks to the of the same, is altogether fraudulent,

such disposition having been made for thebenefit solely of unscrupulous speculators.

And your orator charges further that, in the passage of said act of January 6th, 1855, the government of Florida had in full view the condition annexed to said grant of said swamp lands, and claimed to be, and actually was in the legitimate fulfillment of its duty in the premises; that in the development of the State by the railway system, which was then contemplated, the end, the "reclaiming" of the said swamp lands would be most rapidly and securely attained; that there were no restrictions placed upon the exercise by the said government of discretionary power, as to the mode of effecting that object, the moneys resulting from the sales of portions of said lands to be "exclusively applied" to the purpose in view, only "as far as" was in its judgment "necessary." That the whole subject was exhaustively considered before the passage of said act of January 6th, 1855, (all of which will more fully appear from a "report of the internal-improvement board of Florida," submitted by the governor to both houses of the general
105 assembly on Friday, December 22nd, 1854," a copy of which is hereto annexed, marked Exhibit D, which your orator prays may be taken as part of this his bill of complaint, with the usual liberty of reference) as a sequence of which report the said act was adopted. And your orator charges that, in fact, the results so ardently desired have been thereby to a very great extent accomplished. That the faith of the State thus tendered by solemn legislative enactment was accepted. That the bonds whose coupons were thus to be paid by a board of trustees composed of the highest State functionaries, ex-officio vested with an irrevocable title to a vast domain to be held by them primarily liable to the purchasers and holders of said bonds for such payment were readily received in exchange for the iron, rail, spikes, chairs, etc,, which now lie upon two long lines of railway traversing the State from the Atlantic waters to those of the Gulf; and at other times they pretend the *the* course they are pursuing in the management of said
106 Internal-Improvement Fund will enhance the value of said fund, and thus be of ultimate benefit to your orator; whereas your orator charges that they have been and are daily wasting said fund; that they are rapidly destroying the security of your orator for the payment of his coupons and bonds, and that unless he be relieved by the restraining power of this court they will inflict upon him irreparable loss. And at other times they pretend that they have never refused to return proper accounts and reports of their actings and doings with reference to the said trust funds and lands; whereas your orator charges that for the last two years they have refused to give any account, or to make any report whatsoever; that the amount which should have been collected by them from the said purchasers of the said The Florida Railroad on account of said sinking fund is from sixty to seventy thousand dollars; that the net amount from the sales of land, judging from the general average of sales made by their
107 prede*de*cessors in the trust, should be from one to two hundred thousand dollars; that of this large aggregate sum the said trustees have given no account whatever, although it was the habit of their predecessors to make yearly reports of their actings and doings, and monthly reports of sales, receipts, and disbursements; and your orator charges that their neglect in this respect had become so manifest and scandalous as to have invoked the following comment of the governor of Florida in his annual message under date of January 7th, 1869: "The reports of the surveyor-general, and the board of Trustees

of the Internal-Improvement Fund, show the affairs of that department in rather a confused and unsatisfactory condition," etc., which will appear by reference to a copy of said message hereto annexed and marked Exhibit "E," which your orator prays may be taken as part and parcel of this his bill of complaint, with the usual liberty of reference; that as one of the results of their failure to keep regular accounts of their
108 receipts and disbursements, and to make proper returns of the same, they have been and are in position to apply trust funds in their hands to the payment of coupons without regard to their time as fixed by priority of dates in falling due, all of which is in gross violation of sections 2, 3, and 13, of said act of January 6, 1855, which required said trustees to pay first the coupons oldest past due, and the others in the order in which they had fallen due, the language of said act being that they should "pay out of said fund the interest" upon said bonds, "from time to time as it may become due."

And your orator further charges that they are also in position fraudulently to purchase, and are actually purchasing, coupons not yet properly payable, and also coupons which your orator is informed and believes have been already paid, but which have been reissued and are fraudulently outstanding, making said purchases at nominal prices and giving said coupons in exchange for lands belonging to said trust fund at great profit to themselves.

109 (6th.) For that the said defendant has not answered in manner aforesaid those parts of the bill of complaint stating, charging, & interrogatory, which seek discovery as to the acts of himself and the said body over which he presided, the said The Trustees of the Internal-Improvement Fund from the year 1865, when they entered upon the trust to the year 1868, when they relinquished it, more especially as to the amount and character of the said trust fund and property when it came into their hands, and the amount and character of the same when it passed into the hands of their successors. The amount, character, and quality of the lands sold, granted, and donated by them, whether swamp lands or internal-improvement lands, and the persons natural or artificial to whom they were sold, granted, or donated, and in what specific amounts, and for what specific prices, number of acres (if any) of said swamp-lands which were drained by them, and the cost of
110 said drainage. The mode in which payments were made to them by the purchasers of said lands, whether it was in currency, scrip, or how otherwise; and for that the said defendant has wholly failed in his own behalf, and in behalf of the said the body over which he presided made defendants to said bill of complaint, to respond to the prayer of said bill; that they may come to a full and detailed account of all moneys and property whatsoever which may have at any time come into their hands.

(7) For that the said defendant hath not made answer in manner aforesaid, whether the said The Trustees of the Internal-Improvement Fund, did not make investments to a very large amount in Confederate bonds? Whether the same were not a total loss? Whether they did not purchase bonds of the State of Florida? To what amount? Whether said bonds have been paid? If yea, where is or what became of the
111 money, if any; where is or what became of the bonds? And as to other matters embraced in the ninth interrogatory, as follows:

9. Did not said trustees invest $200,000 and over of money belonging to said trust fund in Confederate bonds or scrip, as stated in the bill? And has not the same been a total loss? Did they not purchase a bond or bonds of the State of Florida, to the amount of more

than $41,000 with moneys belonging to said trust fund? Did they not buy these bonds at their par value, and at a time when the bonds and credit of the said State were greatly below par? Where are the said bond or bonds? Have they or any portion of them been paid? If yea, what has become of the money? Did not the said trusees in December, 1867, or at some other, and, if yea, what other time, authorize the president of the said trustees to investa portion
112 of the trust fund at that time under the control of Moses Taylor, or some other person, in the purchase of a certain bond of the State of Florida, payable to Edward N. Dickerson, for the principal sum of $21,000, and to pay the interest thereof in manner and form as stated in the bill? Was not the said bond bought at par value, and were not the bonds and credit of the State greatly below par at the time? What has become of said bond; and, if paid, what has become of the money? Did not said defendants lend other and large amounts of the said trust fund to the State of Florida upon the security set out in the bill? Look upon the printed bill annexed hereto, and marked Exhibit H, and say whether the trustees have not received and do not receive such notes in payment for trust lands. What is its value in national currency? But that the said defendant has either wholly neglected his duty in the premises, or has contemplated to evade it by fail-
113 ing to exercise any diligence whatsoever in procuring the information sought.

(8.) For that the said defendant hath not answered in manner aforesaid that part of complainant's said bill of complaint which reads as follows:

And your orator further shows that the said trustees have in their possession, or under their control, other funds and securities to a considerable amount belonging to the said internal improvement fund. That there are sums owing by the said The Florida Railroad Company, and other parties, to the defendant, The Trustees of the Internal-Improvement Fund of Florida, and liabilities thereto of members of said board of trustees who participated in the illegal and wrongful transactions aforesaid, and that the said trustees neglect and refuse to enforce the collection and payment thereof; but as to the amount and character of said last-mentioned funds, securities, sums, and liabilities,
114 your orator is without information sufficiently accurate to enable him to say more than that, to the best of his belief, they are large.

10. Have not the said trustees now in their actual possession large amounts of money, choses in action, and securites belonging to the said trust fund? Let them specify the amount of said money or scrip, or choses in action, or securities, giving an accurate description of the same? But by a general answer attempts to evade his duty of making known what sums were owing by the said The Florida Railroad Company at the time the said defendant ceased to be president of the said The Trustees, etc., and what sums were so owing at said time by the members of said body, and giving all other information necessary to a full discovery.

In all which particulars the said complainant, except to the an-
115 swer of the said defendant, D. S. Walker, as evasive, imperfect,

and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer thereto.

H. BISBEE, JR.

JACKSON, LAWTON & BASINGER,
Solicitors for Complainant.

116 (Indorsed:) In the circuit court of the United States, for the northern dist. of Florida. Francis Vose, compl't, and Harrison Reed, The Trustees of the Int. Imp. Fund et al., def'ts. Exceptions to the answer of D. S. Walker. Filed March 6, 1871. J. E. Townsend, cl'k. H. Bisbee, jr.; Jackson, Lawton & Bassinger, sol's for compl't.

117 In the United States circuit court for the fifth circuit, north dist. of Florida.

FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal-Improvement Fund of the State of Florida et al., ~~de~~fendants.

To Messrs. Jackson, Lawton & Bassinger, and Bisbee & Archibald, solicitors, &c., of complainant:

GENTLEMEN: Being informed that an order had been entered in the above-entitled cause, dated February 6th, 1871, taking the bill of complaint filed therein, as confessed against Harrison Reed et al., trustees of the Internal-Improvement Fund as solicitors, & of counsel for said trustees we gave Gen'l Henry R. Jackson, one of the solicitors for the complainant, on or about the 20th day of February, 1871, while he was in the city of Tallahassee, conferring with us in reference to a compromise of said suit, notice that we would, as solicitors of the said trustees, move the United States circuit court then appointed to be held here on the 6th instant, on the first day of its sitting, or as soon thereafter as counsel could be heard to set aside said decree pro confesso entered
118 as aforesaid, and for leave in behalf of the said trustees to put in an answer to said bill of complaint. We now give you notice that we will move his honor Philip Frazer, holding the said circuit court at Tallahassee on Tuesday the 21st day of February next, to vacate and set aside said order taking said bill of complaint confessed as against said defendants the said Trustees of the Internal-Improvement Fund and for leave to the said defendants to put in an answer to said bill of complaint upon the following grounds, viz:

First. That said decree pro confesso has been irregularly entered.

Second. That the said defendants have answered the original bill of complaint filed by the said complainant' against them, and that the bill taken as confessed was in a notice served upon the counsel for said defendants referred to and mentioned as a supplemental bill, and that no petition has been filed in said cause praying the leave of the court to file a supplemental bill or bills, and that the complainant was not entitled to a decree pro confesso upon said bill.

Third. That the returns of service endorsed upon the subpœnas issued to the said defendants do not show that the said subpœnas or process were served upon the said defendants, or either of them, as required by the rules of the court, and that as to one of the said
119 trustees, to wit, John S. Adams, there was no service or attempted service of the subpœna issued in said cause in sufficient time to

entitle the said complainant to a decree pro confesso against said defendant John S. Adams, on the rule-day in February, 1871.

Fourth. That the said complainant filed and made amendments to said bill, of which the said defendants have had no notice.

Fifth. That the said defendants have not heretofore been able to prepare and put in an answer to said bill of complaint, and that they have a meritorious defence, &c.

We annex hereto affidavit of John S. Adams, and copy of notice served on us by S. L. Tibbitts, deputy U. S. marshal.

Tallahassee, Fla., March 15th, 1871.

PAPY & PEELER,
Solicitors & of Counsel for Trustees Internal-Improvement Fund.

120 In the United States circuit court for the fifth circuit, northern district of Florida.

FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal-Improvement Fund of the State of Florida et al., defendants.

John S. Adams, one of the Trustees of the Internal-Improvement Fund of the State of Florida, and a defendant in above-entitled cause, being duly sworn, deposes and says: That the said Trustees of the Internal-Improvement Fund of the State of Florida, have a meritorious defense to the bill of complaint filed in above-entitled cause; that this deponent, and as he is advised and believes, his cotrustees deny all and singular the allegations and charges of fraud made in said bill of complaint against this deponent and his cotrustees, and that the said Trustees of the Internal Improvement Fund of the State of Florida desire, and will be prepared to put in an answer to the said bill of complaint; that they have heretofore been unable to prepare and put in an an-

121 swer to said bill of complaint, among others, for the following reasons, viz:

That Harrison Reed, governor of the State of Florida; Robert H. Gamble, comptroller of said State; Simon B. Conover, treasurer of said State; Frank W. Webster, surveyor-general and register of public lands of said State; Almon R. Meek, attorney-general of said State; and this deponent, commissioner of immigration of said State, who composed and were The Trustees of the Internal Improvement Fund of the State (except the said Almon R. Meek, and the said Frank W. Webster, one of whom has resigned and the other of whom has been absent from the State, will hereinafter be more fully stated) as so much engaged immediately preceding, during, and for some after the late session of the legislature of the State of Florida, which commenced on the 3rd day of January, 1871, and adjourned on the day of 1871, with their official duties as officers of the State as aforesaid, as to prevent this deponent, and he believes his cotrustees from giving that time and attention to the matter of preparing an answer to the said bill of complaint and the interrogatories thereto, as would have been required to answer the same fully and completely. That the said Frank W. Webster, surveyor-general and register of public lands of the said State, one of said trustees as aforesaid, has been absent from the said

122 State since on or about the 1st day of February, 1871, and has not yet returned, having been absent and being now detained, as

this deponent is informed and believes, on account of the extensive and dangerous illness of his wife; that the said trustees could not, in the absence of the said Webster, have prepared a proper answer to said bill; that the assistance of the said Webster, in imparting information connected with the affairs of his office, which could not be obtained from any one else, was indispensible to the said trustees and their counsel in the preparation of an answer to the said bill of complaint; that Almon R. Meek, who was the attorney-general of the said State and one of said trustees at the time said bill of complaint was filed, resigned his said office on or about the 10th day of December, 1870; that Sherman Conant was appointed to fill the vacancy occasioned in said office by said resignation; that his term of office expires on the adjournment of said last late session of the legislature, and that J. B. C. Drew, esq., is now filling the said office by appointment. That these changes in the office of attorney-general and the discharge of the duties of the said trustees incident to the late session of the legislature, and the unavoidable absence of the said Frank W. Webster, surveyor-general, &c., as aforesaid, have prevented the said
123 trustees from heretofore preparing and filing their answer to said bill of complaint.

JOHN S. ADAMS.

Sworn to & subscribed before me this day of March, 1871.

T. E. LITTLE,
Not. Pub.

124 In the United States circuit court, northern dist. of Florida.

FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES OF THE Int. Imp. Fund of Fla. et al.
} Bill for injunction, discovery, & relief.

Please take notice that on the 15th day of November, 1870, at 10 o'clock a. m., at the court-house at Savannah, Geo., before his honor W. B. Wood, a judge of said court, we shall apply for an injunction and receiver in the above-entitled cause upon the original and supplemental bills filed therein upon the grounds appearing in said bills.

JACKSON, LAWTON & BASSINGER,
AND BISBEE AND ARCHIBALD,
Complainant's Solicitors.

To Messrs. PAPY & PEELER,
Tallahassee, Fla.

(Indorsed:) Copy. S. L. Tibbitts, dep't. U. S. marshal.

125 (Indorsed:) Francis Vose vs. Harrison Reed et al., Trustees In. Im. Fund et al. Notice & accompanying papers to set aside decree pro confesso. Filed 17th March, 1871. J. E. Townsend, cl'k.

126 In United States circuit court, 5th judicial circuit northern district of Florida. In chancery.

FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES INT. IMP. Fund of Florida et al.
} Bill for injunction, discovery, & relief.

Please take notice that on Tuesday, the 4th day of April, A. D. 1871, at the United States court-room, at Savannah, Ga., at 10 o'clock a. m., of said day, or as soon thereafter as the motion can be held before his Hon. W. B. Woods, a judge of this court, we shall move for the appointment of a receiver in the said cause, of the fund aforesaid, and apply for writs of attachment to be issued against the said trustees and each of them for contempt of the writ of injunction heretofore issued in said cause.

JACKSON, LAWTON & BASSINGER,
BISBEE & ARCHIBALD,
Compl'ts Solicitors.

To Messrs. PAPY & PEELER,
Solicitors for Def'ts Harrison Reed et al., Trustees Int. Imp. Fund of Florida.

127 Came to hand, March 23d, 1871.

Served a copy of the within notice on A. J. Peeler, one of the late firm of Papy and Peeler, this the 23d day of March, 1871.

SHERMAN CONANT,
U. S. Marshal,
Per S. L. TIBBITTS, *Deputy.*

(Indorsed:) In United States circuit court, northern dist. of Fla. Francis Vose vs. Harrison Reed et al., Trustees Int. Impr. Fund of Florida, et al. Notice of motion for the appointment of a receiver & for writs of attachment for contempt of writs of injunction. Original. Filed March 25, 1871. J. E. Townsend, cl'k. Jackson, Lawton & Bassinger; Bisbee & Archibald, compl't's sol's.

128 UNITED STATES OF AMERICA,
Northern District of Florida:

To the judges the circuit court of the United States for the northern district of Florida:

The petition of Francis Vose, a citizen and resident of the State of New York, respectfully shows—

That on the first day of November, 1870, he filed his bill of complaint in this honorable court against Harrison Reed and others, the Trustees of the Internal-Improvement Fund of Florida and others, a copy of which is hereto annexed as part of this, his petition.

That on the 6th day of December the said bill was amended, so as to make the Great Southern Railway Company a party defendant thereto, and for other purposes.

That on the last-mentioned day, upon motion of your petitioner, a writ of injunction was issued in accordance with the prayer of said bill, and in manner and form as follows:

129 UNITED STATES OF AMERICA,
State of Florida:

In the fifth circuit court of the United States for the northern district of Florida.

To Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the Trustees of the Internal-Improvement Fund of Florida, and to their successors The Florida Improvement Company and its agents and servants, in the said State of Florida:

Whereas it appears to me, W. B. Woods, judge of the courts of the United States for the fifth judicial circuit, that Francis Vose, *that Francis Vose*, a resident and citizen of the State of New York, brings his bill of complaint in the circuit court of the United States for the northern district of Florida, in which he shows that he is the owner of a large number of bonds issued by the Florida Railroad Com-
130 pany, with a large number of coupons upon them, which are past due, and which you, the said trustees named above, refused to pay, in violation of an act passed by the legislature of Florida, on the 6th day of January, in the year 1855, irrevocably vesting in you 10,500,000 acres of land in trust, to make sale of the same according to the provisions of said act, and from the proceeds of such sales to pay the coupons on such bonds as they should fall due; but that, instead thereof, you, the said trustees, are misapplying the funds belonging to said trust, are improperly and fraudulently misappropriating the same and selling and transferring said lands in amounts, in manner and for considerations that are wholly inconsistent with and violative of the provisions of said act; that you are donating and disposing of the same for merely nominal prices, and for script and State warrants, not recognized as the lawful currency of the United States; more
131 especially and recently have entered into an agreement with you the said The Florida Improvement Company, and you the said Myron L. Mickles, the agent of said company, by which said agreement 1,000,000 acres of land belonging to said trust, to be selected from the entire trust domain, are transferred to the said New York and Florida Lumber Land and Improvement Company, at the nominal price of ten cents per acre, and that you, the said Mickles and others, the agents and servants of said company, are selecting, locating, advertising, and selling the said lands, and that thus you, the said trustees, are wasting and destroying the land and the fund so vested in you by said act of 1855, and by the foregoing, and by other lawless and fraudulent acts, are diverting the moneys which have come and are coming into your hands by virtue of said trust from the payment of said coupons in the order in which they feel due.

132 And whereas, the complainant by his said bill prays that the writ of injunction be issued, restraining you, the above-named parties, from the acts which are therein complained of.

I do, therefore, in the name and by the authority of the United States of America strictly enjoin and command you, the said Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, The Trustees of the Internal-Improvement Fund of Florida, and your successors, under penalty of attachment for contempt, and a pain of ten thousand dollars for each act violative of this injunction, that you, and each and all of you, both in your

individual and collective capacity, do desist from selling or donating or disposing of the land belonging to said trust otherwise than in strict accordance with the provisions of said act of 1855, fixing the price and allowing pre-emptions of the same in obedience to all the restrictions of the act; that you desist from selling said lands for scrip or State warrants of any kind, or for aught else than current money of the
133 United States; that you desist from lending or investing, appropriating, disposing of, or using any of the moneys or property of said trust fund, except in applying them to the creation of the sinking fund provided by said act of 1855, and so applying them in strict accordance with the provisions of that act, when said moneys properly belong to said sinking fund, or in payment of the coupons of said bonds when said moneys have proceeded, or shall proceed, from the sale of said lands, and that you desist from paying said coupons in any other mode than in the order of their priority fixed by the date of their coming to maturity, paying first such as first became due, and the others in the order in which they fell due. And I do enjoin and command you further and specially that you desist and refrain from any and all action in executing and carrying out the agreement between you, the said The Florida Improvement Company, described in said agreement as the New York and Florida Lumber Land, and
134 Improvement Company, which said agreement is embodied in the resolution passed by you, the said trustees, on the first day of March, in the year eighteen hundred and seventy, or thereabouts, and in which said agreement you, the said trustees, give and grant to the said company, their successors and assigns, "authority" to select and locate from the lands belonging to the internal improvement fund one million one hundred thousand acres of said land at the rate of and price of ten cents per acre, upon terms and conditions which are therein set forth.

And I do enjoin and command you, the said Florida Improvement Company, and you the said Myron L. Mickles and others, the agents and servants of the said The New York and Florida Lumber Land and Improvement Company, that under the penalty and pain hereinbefore set out, you desist from further action under the said agreement which the said trustees whether in selecting or locating lands
135 embraced in said agreement, or in advertising and selling the same, or in disposing of or intermeddling with the proceeds which have resulted from the sale of any portion of the same, further than to retain them safely, subject to the further order and decree of this court.

In witness whereof, I have hereunto set my official hand at Jacksonville, in the northern district of Florida, this sixth day of December, in the year eighteen hundred and seventy.

W.. B. WOODS,
U. S. Circuit Judge for the 5th Circuit,
Northern District of Florida.

And your petitioner further shows that a writ of subpœna, directed to Harrison Reed, Robert H. Gamble, A. R. Meek, Frank W. Webster, S. B. Conover, and John S. Adams, The Trustees of the Internal-Improvement Fund, and to David S. Walker and others, individuals and corporations, was also issued, commanding them, and every of them, to appear on the first Monday of January, 1871, then and there
136 to answer your petitioner's said bill of complaint, etc.

That said writs of injunction and subpœna were duly served upon all the parties to whom they were respectively directed.

That all of the defendants named in said writ of subpœna, with the single exception of David S. Walker, have failed to obey the mandate of the court, and that orders were entered on the first Monday of February last, at the clerk's office of this honorable court, that the bill be taken pro confesso against them.

That the defendants named in said writ of injunctions have wholly failed to obey, or to respect the orders of the court as therein set forth, but on the contrary thereof have treated the same with manifest contempt; that on or about the sixth day of March, 1871, the said Trustees of The Internal-Improvement Fund, sold to E. A. Studwell three hundred thousand acres of the lands belonging to said fund; the sale being made at ten cents per acre, and upon terms identical with those of the agreement between the said trustees and the Florida Improve-
137 ment Company, the execution of which said agreement had been specifically enjoined. And your petitioner shows that the said E. A. Studwell is a member and officer of the said The Florida Improvement Company; that, as part of the arrangement between the said trustees and himself, and as a condition of said sale, they, the said trustees, are to be relieved from any obligation to carry out their said original agreement with the said company; so far as the 300,000 acres are concerned, the said company relinquishing its claim to that quantity of its purchase, in favor of said Studwell. And your petitioner submits that this action of the said the trustees and the said Studwell, is in manifest evasion, and therefore in contempt of the injunctional order herein before set out.

And your petitioner further shows that, prior to the filing of his said bill of complaint, the said the trustees, etc., had undertaken to convey to the Southern Inland Navigation and Improvement Company, one of the defendants named in said bill, a much larger quantity of said
138 trust lands than is therein set forth, to wit, the enormous quantity of about one and one-quarter millions of acres, at six and one-half cents per acre; or for some other wholly inadequate consideration; but that the said sale was not consummated until after the said writ of injunction had been served upon the said the trustees, and was not, in fact, perfected until within about a month last past, by delivery of the title-deed to W. H. Gleason, the managing agent of said last-mentioned company.

And your petitioner further shows unto your honors that after the order granted by the Hon. W. B. Woods, on the 31st day of October, 1870, together with a copy of your petitioner's said bill of complaint had been served upon each of the said the trustees, giving them notice to show cause why the writ of injunction should not be issued as prayed for; nay, while the day for the hearing of said motion was being postponed at the instance and upon the pretexts of said defendants, and while his honor Judge Woods had the question of granting said writ under judicial advisement, the said trustees were active
139 in making a conveyance of one hundred and two thousand four hundred and seven $\frac{17}{100}$ acres of land to the Great Southern Railway Company. And your petitioner submits that the two last-named conveyances and sales by the said trustees, and their acts in connection with the same, are in contempt of the authority and the injunctional orders of this honorable court.

Your petitioner is informed that, in pretended explanation of their said evasions and said violations of said injunctional order, the said

the trustees claim to be acting under legal advice; that by the 16th section of the act of 1855, they "are required" to encourage actual settlement and cultivation of said lands, by allowing pre-emptions under such rules and regulations as they may deem advisable," and that the sales which your petitioner has referred to, have been made by them in the legitimate discharge of their trust, and consequently are not in violation of said injunction, being "not otherwise than in strict accordance with the provisions of said act of 1855." But your petitioner shows that not only was said writ of injunction granted upon the ground that sales of such vast domains to private persons, and for nominal prices,
140 were in violation of the act of 1855, and a gross fraud as against your petitioner's rights, but that the people of Florida, whose interests and welfare these trustees and their colleagues in waste and plunder so noisily pretend to be protecting, have condemned such sales and practices by concurrent resolution of their general assembly.

Concurrent resolution relative to certain lands about to be disposed of by The Trustees of the Internal Improvement Fund:

Whereas it is understood by this general assembly that The Trustees of the Internal Improvement Fund have sold, or are about to sell the lands in Escambia and Santa Rosa Counties for six cents per acre to the Pensacola and Louisville Railroad Company; therefore,

Resolved by the assembly, the senate concurring, That any such sale ought not to be made; that its effect is to depreciate the real estate held by the fund; to prevent actual settlers from getting homes; to make citizens look to the liberality of a corporation instead of to the States' fostering care of her citizens; to weaken the State govern-
141 ment and State authorities, and strengthen a corporation; to reduce the value of State lands; and therefore, that the trustees aforesaid ought not to make said sale to said corporation.

Adopted February 12, 1870.

Your petitioner avers that the condemnation thus emphatically expressed by the legislature of Florida upon the actings and doings of the said trustees complained of by your petitioner, meets the approval of all of her people who are truly interested in her welfare, and who are not directly or indirectly connected with the men, or "the rings," who seek to prey upon her means and her credit.

Your petitioner further shows, that prior to the granting of said writ of injunction, the said *said* Florida Improvement Company, had deposited in the hands of Simon B. Conover, then treasurer of said board of trustees, coupons detached from bonds, which had been issued in accordance with the provisions of the said act of 1855, to the amount upon their face of $10,000; that this deposit was made by said company in attempted payment for one hundred thousand acres of land under said agreement between the said trustees and the
142 said improvement company, but said Conover refused so to accept it. That the market value of said coupons, if not worthless, was not more than 10 to 30 cents on the dollar, and had they been accepted by said treasurer the land would have been paid for at the rate of from one to three cents per acre; that as the result of said refusal by said Conover, the sale to said company remained incomplete at the time said writ of injunction was issued and served, but that subsequently the said Conover having been displaced and John S. Adams appointed in his stead, the said coupons were accepted at par in payment by the latter, and the sale was perfected.

And your petitioner charges that all this is in manifest contempt of the injunctional order of this court, as well in reference to the execution of said agreement between the said trustees and the said improvement company and the sale of said trust lands generally, as in reference to the receipt of aught else than current money of the United States in payment for the same.

143 And your petitioner further shows that, although he is the holder of a very large number of coupons referred to in said writ of injunction, and which are oldest in date; and although there ought to be a considerable sum in the hands of the said treasurer of said board; and although it is not denied that there is actually a small sum which should be applied to their payment, yet that his repeated applications for payment of the same have been met by refusals; that your petitioner has good reason to believe that these *indeed* all other monies which have come or which are coming into the hands of the treasurer of said trustees, whether from the sale of lands or from the payments of the one per cent. per annum by railroad companies to the sinking fund, are being misappropriated, misapplied, and wasted; that they are paid out to coupons which are junior to his own, or which have been fraudulently reissued, or are fraudulently outstanding; that they are used or lent out by said board of trustees or by members of it, in a manner violative of their trust and ruinous to the rights of your petitioner, or are squandered in payment of the expenses of litigation gener-

144 ated by the neglect of the said trustees to discharge their manifest duty, not simply in the matters of which petitioner complains, but in others; and that all this still goes on in glaring contempt of the order of the court.

And your petitioner shows that while the said trustees stand in contempt as aforesaid of the mandate of your honors, that they should make answer to your petitioner's said bill of complaint and render an account of their past administration of said fund, they do not fail, by withholding the books and records of the said board from inspection, and by refusing to give to your petitioner the information to which he has a clear right, as cestui que trust, to cast such darkness around their present and current acts and doings as to make it quite impossible to ascertain how repeatedly, or to what extent they are daily violating the orders of the court and the rights of your petitioner. But he most solemnly avers his belief that in their keeping this great fund, whether existing in lands or money, is in the most imminent danger of being wholly lost, not simply to your petitioner and others, bona fide cred-

145 itors and cestui que trustes in it, but eventually to the people of Florida themselves.

And thereupon he respectfully prays that a fit and proper person may be appointed, as speedily as possible, receiver, to take charge of the same, under such directions and limitations as to your honors may seem wise and proper. And your petitioner further prays that an order may be issued, directed to the said Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams. The Trustees of the Internal-Improvement Fund of Florida, and to J. B. C. Drew, and any others their successors; and also to Myron S. Mickles and E. A. Studwell and others, agents and servants of the said The Florida Improvement Company, commanding them and each of them to appear upon some day and at some place, to be designated by your honors and show cause, if any they have, why the penalty set out in said writ of injunction should not be inflicted upon them, and every of them, for and on account of their various acts in contempt of the same.

146 UNITED STATES OF AMERICA,
State of Georgia:

Personally appeared Francis Vose, who, being duly sworn, deposes & says that he is informed and does verily believe that S. B. Conover, J. S. Adams, A. L. Meek, and F. W. Webster, who are Trustees of the Internal Improvement Fund, are themselves stockholders in the Great Southern Railway, the corporation referred to in this petition, as also in the amended bill of complaint, likewise referred to therein.

And deponent further says he is informed and believes that E. H. Reed is also a stockholder, is the son of Harrison Reed, also a trustee; that the name of Harrison Reed appears as a corporator in the act giving to said railway its charter; and deponent does verily believe that the interest of the son is the interest of the father.

Deponent further says that the publication hereto annexed, bearing the caption "Astounding Disclosures," contains a correct statement of the persons interested in said railway, as he does verily believe; and he does also believe that the said the trustees, through the
147 influence of the said the corporators or stockholders, who are also trustees, are conveying and granting to said railroad company the lands of said trust fund in large quantities.

F. VOSE.

Sworn to and subscribed before me Ap'l 18th, 1871.
[SEAL.] JAS. McPHERSON, *Clerk.*

(Indorsed:) Francis Vose vs. The Trustees of the Int. Im. Fund of Florida et al. Affidavit to be used upon motion for receiver. Filed April, 1871.

148 UNITED STATES OF AMERICA,
Northern District of Florida:

To the judges of the circuit court of the United States for the northern district of Florida:

The petition of Francis Vose, a citizen and resident of the State of New York, respectfully shows—

That on the first day of November, 1870, he filed his bill of complaint in this honorable court against Harrison Reed and others, the Trustees of the Internal-Improvement Fund of Florida and others, a copy of which is hereto annexed as part of this his petition.

That on the sixth day of December the said bill was amended so as to make the Great Southern Railway Company a party defendant thereto, and for other purposes.

That on the last-mentioned day, upon motion of your petitioner, a writ of injunction was issued in accordance with the prayer of said bill, and in manner and form as follows:

In the fifth circuit court of the United States for the northern district of Florida.

UNITED STATES OF AMERICA,
State of Florida:

To Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the Trustees of the Internal-Improvement Fund of Florida, and their successors, the Florida Improvement Company and its agents and servants, in the said State of Florida:

149 Whereas it appears to me, W. B. Woods, judge of the court of

the United States for the fifth judicial circuit, that Francis Vose, a resident and citizen of the State of New York, brings his bill of complaint in the circuit court of the United States for the northern district of Florida, in which he shows that he is the owner of a large number of bonds issued by the Florida Railroad Company, with a large number of coupons upon them which are past due, and which you, the said trustees named above, refuse to pay, in violation of an act passed by the legislature of Florida on the 6th day of January, in the year 1855, irrevocably vesting in you 10,500,000 acres of land, in trust, to make sale of the same according to the provisions of said act, and from the proceeds of such sales to pay the coupons on such bonds as they should fall due, but that instead thereof you, the said trustees, are misapplying the funds belonging to said trust, are improperly and fraudulently misappropriating the same, and selling and transferring said lands in amounts in manner and for considerations that are wholly inconsistent with and violative of the provisions of said act; that you are donating and disposing of the same for merely nominal prices, and for scrip and State warrants not recognized as the lawful currency of the United States; more especially and recently have entered into an agreement with you the said The Florida Improvement Company, and you the said Myron L. Mickles, the agent
150 of said company, by which said agreement 1,100,000 acres of land belonging to said trust, to be selected from the entire trust domain, are transferred to the said New York and Florida Lumber, Land and Improvement Company at the nominal price of ten cents per acre; and that you, the said Mickles and others, the agents and servants of said company, are selecting, locating, advertising, and selling the said lands; and that thus you, the said trustees, are wasting and destroying the land and the fund so vested in you by said act of 1855, and by the foregoing, by other lawless and fraudulent acts, are diverting the moneys which have come and are coming into your hands by virtue of said trust from the payment of said coupons in the order in which they fell due.

And whereas the complainant by his said bill prays that the writ of injunction be issued, restraining you, the above named parties, from the acts which are therein complained of:

I do, therefore, in the name and by the authority of the United States of America, strictly enjoin and command you, the said Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the Trustees of the Internal-Improvement Fund of Florida, and your successors, under penalty of attachment for contempt, and a pain of ten thousand dollars for each act violat-
151 ive of this injunction, that you and each and all of you, both in your individual and collective capacity, do desist from selling or donating or disposing of the land belonging to said trust otherwise than in strict accordance with the provisions of said act of 1855, fixing the price and allowing pre-emption of the same, in obedience to all the restrictions of that act; that you desist from selling said lands for scrip or State warrants of any kind, or for aught else than current money of the United States; that you desist from lending or investing, appropriating, disposing of, or using any of the moneys or property of said trust fund, except in applying them to the creation of the sinking fund, provided by said act of 1855, and so applying them in strict accordance with the provisions of that act, when said moneys properly belong to said sinking fund, or in payment of the coupons of said bonds when said moneys have proceeded or shall proceed from the sale of

said lands; and that you desist from paying said coupons in any other mode than in the order of their priority, fixed by the date of their coming to maturity, paying first such as first became due, and the others in the order in which they fell due; and I do enjoin and command you further and specially that you desist and refrain from any and all action in executing and carrying out the agreement between you, the said the Florida Improvement Company, described in said agree-
152 ment as the New York and Florida Lumber, Land and Improvement Company, which said agreement is embodied in the resolution passed by you, the said trustees, on the first day of March, in the year eighteen hundred an seventy, or thereabouts, and in which said agreement, you, the said trustees, give and grant to the said company, their successors and assigns, "authority" to select and locate from the lands belonging to the Internal-Improvement Fund, one million one hundred thousand acres of said land, at the rate of and price of ten cents per acre, upon terms and conditions which are therein set forth.

And I do enjoin and command you, the said Florida Improvement Company, and you the said Myron L. Mickles and others, the agents and servants of the said New York and Florida Lumber, Land and Improvement Company, that, under the penalty and pain hereinbefore set out, you desist from further action under the said agreement with the said trustees, whether in selecting or locating lands embraced in said agreement, or in advertising and selling the same, or in disposing of or intermeddling with the proceeds which have resulted from the sale of any portion of the same, further than to retain them safely, subject to the further order and decree of this court.

In witness whereof I have hereunto set my official hand, at Jack-
sonville, in the northern district of Florida, this sixth day of De-
153 cember, in the year eighteen hundred and seventy.

W. B. WOODS,

U. S. Circuit Judge for the 5th Circuit, North. Dist. of Fla.

And your petitioner further shows that a writ of subpœna, directed to Harrison Reed, Robert H. Gamble, A. R. Meek, Frank W. Webster, S. B. Conover, and John S. Adams, the Trustees of the Internal-Improvement Fund, and to David S. Walker and others, individuals and corporations, was also issued, commanding them and every of them to appear on the first Monday of January, 1871, then and there to answer your petitioner's said bill of complaint, etc.

That said writ of injunction and subpœna were duly served upon all the parties to whom they were respectively directed.

That all the defendants named in said writ of subpœna, with the single exception of David S. Walker, have failed to obey the mandate of the court, and that orders were entered on the first Monday of February last, at the clerk's office of this honorable court, that the bill be taken pro confesso against them.

That the defendants named in said writ of injunction have wholly failed to obey or to respect the orders of the court as therein set forth, but on the contrary thereof have treated the same with manifest contempt. That on or about the sixth day of March, 1871, the said Trustees of the Internal-Improvement Fund sold to E. A. Studwell,
three hundred thousand acres of the lands belonging to said fund,
154 the sale being made at ten cents per acre, and upon terms identical with those of the agreement between the said trustees and the Florida Improvement Company, the execution of which said agree-

ment had been specifically enjoined. And your petitioner shows that the said E. A. Studwell is a member and officer of the said The Florida Improvement Company; that as part of the arrangement between the said trustees and himself, and as a condition of said sale, they, the said trustees, are to be relieved from any obligation to carry out their said original agreement with the said company so far as the 300,000 acres are concerned, the said company relinquishing its claim to that quantity of its purchase in favor of said Studwell; and your petitioner submits that this action of the said the trustees and the said Studwell is in manifest evasion, and therefore in contempt of the injunctional order hereinbefore set out.

And your petitioner further shows that, prior to the filing of his said bill of complaint, the said the trustees, etc., had undertaken to convey to the Southern Inland Navigation and Improvement Company, one of the defendants named in said bill, a much larger quantity of said trust lands than is therein set forth, to wit, the enormous quantity of about one and one-quarter millions of acres, at six and one-half cents per acre, or for some other wholly inadequate consideration, but
155 that the said sale was not consummated until after the said writ of injunction had been served upon the said the trustees, and was not, in fact, perfected until within about a month last past, by delivery of the title-deed to W. H. Gleason, the managing agent of said last-mentioned company.

And your petitioner further shows unto your honors that, after the order granted by the Hon. W. B. Woods, on the 31st day of October, 1870, together with a copy of your petitioner's said bill of complaint, had been served upon each of the said the trustees, giving them notice to show cause why the writ of injunction should not be issued as prayed for; nay, while the day for the hearing of said motion was being postponed at the instance and upon the pretexts of said defendants, and while his honor Judge Woods had the question of granting said writ under judicial advisement, the said trustees were active in making a conveyance of one hundred and two thousand four hundred and seven $\frac{17}{100}$ acres of land to The Great Southern Railway Company; and your petitioner submits that the two last-named conveyances and sales by the said trustees, and their acts in connection with the same, are in contempt of the authority and the injunctional orders of this honorable court.

Your petitioner is informed that, in pretended explanation of their said evasions and said violations of said injunctional order, the said the trustees claim to be acting under legal advice; that by the 16th section of the act of 1855 they "are required" to encourage
156 actual settlement and cultivation of said lands by allowing preemptions under such rules and regulations as they may deem advisable; and that the sales which your petitioner has referred to have been made by them in the legitimate discharge of their trust, and consequently are not in violation of said injunction, being "not otherwise than in strict accordance with the provisions of said act of 1855." But your petitioner shows that, not only was said writ of injunction granted upon the ground that sales of such vast domains to private persons, and for nominal prices, were in violation of the act of 1855, and a gross fraud as against your petitioner's rights, but that the people of Florida, whose interests and welfare these trustees and their colleagues in waste and plunder so noisily pretend to be protecting, have condemned such sales and practices by concurrent resolution of their general assembly.

Concurrent resolution relative to certain lands about to be disposed of by the Trustees of the Internal-Improvement Fund.

Whereas it is understood by this general assembly that the Trustees of the Internal-Improvement Fund have sold, or are about to sell, the lands in Escambia and Santa Rosa counties for six cents per acre to the Pensacola and Louisville Railroad Company: Therefore,

Resolved by the assembly (the senate concurring), That any such sale ought not to be made; that its effect is to depreciate the
157 real estate held by the fund; to prevent actual settlers from getting homes; to make citizens look to the liberality of a corporation instead of to the State's fostering care of her citizens; to weaken the State government and State authorities and strengthen a corporation; to reduce the value of State lands; and, therefore, that the trustees aforesaid ought not to make said sale to said corporation.

Adopted February 12, 1870.

Your petitioner avers that the condemnation thus emphatically expressed by the legislature of Florida upon the actings and doings of the said trustees complained of by your petitioner meets the approval of all of her people who are truly interested in her welfare, and who are not directly or indirectly connected with the men or "the rings" who seek to prey upon her means and her credit.

Your petitioner further shows that, prior to the granting of said writ of injunction, the said The Florida Improvement Company had deposited in the hands of Simon B. Conover, then treasurer of said board of trustees, coupons detached from bonds which had been issued in accordance with the provisions of the said act of 1855 to the amount upon their face of $10,000; that this deposit was made by said company in attempted payment for one hundred thousand acres of land under said agreement between the said trustees and the said improvement company, but said Conover refused so to accept it;
158 that the market value of said coupons, if not worthless, was not more than 10 to 30 cents on the dollar, and had they been accepted by said treasurer the land would have been paid for at the rate of from one to three cents per acre; that, as the result of said refusal by said Conover, the sale to said company remained incomplete at the time said writ of injunction was issued and served, but that subsequently, the said Conover having been displaced and John S. Adams appointed in his stead, the said coupons were accepted at par in payment by the latter and the sale was perfected. And your petitioner charges that all this is in manifest contempt of the injunctional order of this court, as well in reference to the execution of said agreement between the said trustees and the said improvement company, and the sale of the said trust lands generally, as in reference to the receipt of aught else than current money of the United States in payment for the same.

And your petitioner further shows that, although he is the holder of a very large number of coupons referred to in said writ of injunction, and which are oldest in date, and although there ought to be a considerable sum in the hands of the said treasurer of said board, and although it is not denied that there is actually a small sum which should be applied to their payment, yet that his repeated applications for payment of the same have been met by refusals; that your
159 petitioner has good reason to believe that these, as indeed all other, moneys which have come or which are coming into the

hands of the treasurer of said trustees, whether from the sale of lands or from the payments of the one per cent. per annum by railroad companies to the sinking fund, are being misappropriated, misapplied, and wasted; that they are paid out to coupons which are junior to his own or which have been fraudulently reissued or are fraudulently outstanding; that they are used or lent out by said board of trustees or by members of it in a manner violative of their trust and ruinous to the rights of your petitioner, or are squandered in payment of the expenses of litigation generated by the neglect of the said trustees to discharge their manifest duty not simply in the matters of which your petitioner complains, but in others, and that all this still goes on in glaring contempt of the order of the court.

And your petitioner shows that, while the said trustees stand in contempt as aforesaid of the mandate of your honors that they should make answer to your petitioner's said bill of complaint, and render an account of their past administration of said fund, they do not fail, by withholding the books and records of the said board from inspection, and by refusing to give to your petitioner the information to which he has a clear right as cestui que trust, to cast such darkness around
160 their present and current acts and doings as to make it quite impossible to ascertain how repeatedly or to what extent they are daily violating the orders of the court and the rights of your petitioner. But he most solemnly avers his belief that in their keeping this great fund, whether existing in lands or money, is in the most imminent danger of being wholly lost, not simply to your petitioner and others, bona ide creditors and cestuis que trusts interested in it, but eventually to the people of Florida themselves.

And thereupon he respectfully prays that a fit and proper person may be appointed, as speedily as possible, receiver, to take charge of the same under such directions and limitations as to your honors may seem wise and proper.

And your petitioner further prays that an order may be issued directed to the said Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, The Trustees of the Internal-Improvement Fund of Florida, and to J. B. C. Drew, and any others their successors; and also to Myron S. Mickles and E. A. Studwell and others, agents and servants of the said The Florida Improvement Company, commanding them and each of them to appear upon some day and at some place to be designated by your honors, and show cause, if any they have, why the penalty set out in said writ of injunction should not be inflicted upon them, and every of
161 them, for and on account of their various acts in contempt of the same

(Signed) FRANCIS VOSE.

And sworn to.

In the circuit court of the United States for the northern district of Florida, in chambers, at Savannah, April 17, 1871.

On reading this petition it is ordered that Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, John S. Adams, and J. B. C. Drew, the Trustees of the Internal-Improvement Fund of Florida, and any others, their successors, show cause before me or before the Hon. Jos. P. Bradley, judge of the Supreme Court of the United States for this judicial circuit, on the eighth day of May

next, at the rooms of the courts of the United States, in Savannah, and at ten o'clock in the morning, why a receiver should not be appointed in accordance with the prayer of said petition, and that the said parties above named, and also Myron M. Mickles & E. A. Studwell & others, agents and servants of the Florida Improvement Company, show cause at the same time & place why the penalty set out in said writ of injunction should not be inflicted upon them, and each of them, in accordance with petitioner's prayer.

And it is further ordered that said defendants hereinbefore named have leave to file their answers to complainant's bill of complaint,
162 referred to in the said petition as having been filed by him in this court, at any time before the day hereby appointed for the said "showing cause" by them, & to use such answers, whether they be filed or not at the said hearing, provided a good reason be given for the failure to file them. And it is further ordered that the said parties hereinbefore named as defendants shall receive notice of this order by service of a copy of the same and of this petition, but without the exhibit, upon their solicitors at least ten days before the said 8th day of May next.

And it is further ordered that the clerk of the United States courts at Jacksonville deliver the original bills of complaint and all other original papers, constituting the record in said cause of Francis Vose vs. The Trustees of the Internal-Improvement Fund & others to complainants' counsel, that they may be used in the said hearing on the 8th day of May next.

(Signed) W. B. WOODS,
U. S. Circuit Judge for 5th Circuit & Northern District of Florida.

163 STATE OF FLORIDA,
Duval County, ss:

Personally came before me this day Robert B. Archibald, who, being duly sworn, deposes and says: That on the 29th of April, A. D. 1871, he served a true copy of the foregoing petition and order upon Harrison Reed, governor of the State of Florida, and chairman of the Board of Trustees of the Internal-Improvement Fund of Florida, at Jacksonville, Duval County, Florida.

That he took a copy of said petition and order to the office of Messrs. Sanderson & L'Engle for the purpose of serving a copy upon said Sanderson & L'Engle, as att'ys for the Florida Improvement Company and also for E. A. Studwell; that he was informed by Ew'd L'Engle, of the firm of Sanderson & L'Engle, that said firm were not the attorneys of E. A. Studwell, and that a copy had been served upon said firm as attorneys for the Florida Improvement Company.

R. B. ARCHIBALD.

Subscribed & sworn to before me this 1st day of May, A. D. 1871.
C. L. ROBINSON,
U. S. Commissioner.

164 (Indorsed:) United States circuit court. Petition of Francis Vose vs. Harrison Reed et al. Filed May 4, 1871. J. E. Townsend, cl'k.

165 In the circuit court of the United States for the fifth circuit, north. dist. of Fla. In equity.

FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED ET AL. TRUSTEES OF THE Internal Improvement Fund et al., defendants.

GENTLEMEN: You will please take notice that on Thursday, the 8th day of May next, 1871, at Jacksonville, Florida, at 10 a. m. or as soon thereafter as counsel can be heard we will move his honor Joseph P. Bradley, associate justice of the Supreme Court of the United States to dissolve the injunction heretofore granted in above-entitled cause, dated the 6th day of December, 1870, upon answer to the bill, and that preliminary to the argument of the said motion we will ask that the order heretofore filed in said cause, taking the bill for confessed, &c., be vacated and set aside.

Dated 11th May, 1871.

PAPY & PEELER,
J. B. C. DREW,
Solicitors for the Trustees of the Internal-Improvement Fund.

To Messrs. JACKSON, LAWTON & BASSINGER,
& BISBEE & ARCHIBALD,
Solicitors for Complainants.

(Indorsed:) Cir. court of U. S. fifth circuit, north. dist. of Florida, Francis Vose, compl't, vs. Harrison Reed et al., Trustees In.-Im. Fund et al., def't. Filed May 13, 1871. J. E. Townsend, cl'k. Papy & Peeler & J. B. C. Drew, sol's for trustees.

166 In the circuit court of the United States for the fifth circuit and northern district of Florida.

The joint and several answers of the Florida Improvement Company in the bill called the New York and Florida Lumber, Land and Improvement Company and of Myron S. Mickles, two of the defendants to the bill, and amended bill of complaint of Francis Vose, complainant:

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say:

They admit that the act of the Florida legislature to provide for and encourage a liberal system of internal improvement in the said State, and the other acts of said legislature set forth in the exhibits of said bill, are correctly stated so far as these defendants, without comparing them with the originals, are informed.

167 The defendant, The Florida Improvement Company, admits that the resolutions passed by the Trustees of the Internal-Improvement Fund in reference to this defendant (called in the first interrogatory the New York and Florida Lumber, Land and Improvement Company) are correctly set forth and exhibited in said bill, and that the pamphlet published by the company is also correctly exhibited.

The defendant, Myron L. Mickles, says that he is not able to answer of his own knowledge whether said resolutions are correctly exhibited, inasmuch as he is not a member of said corporation or of said board of trustees, but he believes, from the best of his information, that the same are correctly exhibited, and he answers in like manner so much of said interrogatory as interrogates him concerning the Exhibit C of said bill.

These defendants believe that Exhibits D, E, and F are respectively a true copy of the report of the Internal-Improvement Board of Florida and true copies of annual messages of Governor Harrison Reed to the legislature of Florida. These defendants admit that David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith were the immediate predecessors of the acting trustees in the
168 execution of the trust created by the said act of January 6th, 1855.

These defendants admit that the Florida Improvement Company, called in the second interrogatory the New York and Florida Lumber, Land and Improvement Company, is a New York corporation, as charged in the bill.

They deny that Myron L. Mickles is an agent in Florida of the said corporation for any or other purposes than as herein admitted. That is to say, they admit that said Mickles is an employee and servant of said corporation for the sole and only purpose of locating and selecting lands under a contract between the said corporation and the Trustees of the Internal-Improvement Fund aforesaid.

The said Myron L. Mickles, further answering, says that both before and since the commencement of his employment *of* said corporation he has purchased lands from the State of Florida, and from the Trustees of its Internal-Improvement Fund, and has paid for the same. Further answering, he says that he has never, at any time, directly or indirectly, selected, located, or received of such trust, lands for himself, personally, under any contract between said trustees and said corporation, or in any other wise than above stated.

169 The said Myron S. Mickles further says that he is not able to answer, of his own knowledge, any other matters in said bill concerning which he is interrogated, and refer' for all the information which he has on the matters to the responses of the Florida Improvement Company to the interrogatories propounded to that corporation & said Mickles, which responses the said Mickles believes to be true.

The Florida Improvement Company, further answering for itself, says that it has an office in Jacksonville, Florida, which has been in charge of Myron S. Mickles, who is an employee of the company for the purpose herein stated, and for that only. That said company has other employees in Florida for the purpose of selecting and locating lands, and for that purpose only; said other employees are R. W. B. Hodgson, A. J. McDonald, and M. A. Williams. That said corporation has no agent in Florida, and no employees except as above stated.

That the said corporation organized with a nominal capital of $1,000,000, which was afterwards raised to $2,500,000, which amount was reduced to $25,000, which it now is. Said capital consists of cash paid in and deposited with the treasurer of the company in New York; that about one hundred and seventy-five thousand acres of land
170 have been selected and located in Florida under the agreement set out in Exhibit B, of which about one hundred thousand acres have been paid for, the amount of the payment being ten thousand dollars, or thereabouts. The payment was made last October, in

Florida, to J. S. Adams, commissioner of emigration of Florida, and was made in past-due coupons of first-mortgage bonds of the Florida, Atlantic & Gulf Central Railroad, and of the Pensacola and Georgia Railroad, which was paid at par value. In addition to which payment, and at a further consideration to the trustees, the said company has expended the several sums and performed the labors set forth in the schedule thereto attached, marked B. The lands so selected were from the internal-improvement land proper, and from the swamp or overflowed lands. The number of acres selected from each of said classes of lands, and their localities, are stated in a schedule attached to this answer and marked Exhibit A.

The said defendant, The Florida Improvement Company, further answers and says that said company is offering said selected lands at from three to ten dollars per acre, and that it has not drained or undertaken to drain any of such lands. It further says, that it does not
171 know whether said Mickles has ever selected, located, or received any of such trust lands for himself personally, but refers for information thereon to the response of said Mickles, which this other defendant believes to be true.

The said Florida Improvement Company, further answering, as to so much of the complainant's amended bill of complaint as alleges that this defendant exists and has been created a body corporate under the laws of Florida, with the name of The Florida Improvement Company, that said company is composed of a number of persons who have associated themselves together and become incorporated for the transaction of business under provisions of the act of the general assembly of Florida, approved on the 8th day of August, 1868; that they are a body of persons acting as a corporation under said act, and that their chief place of business is at Jacksonville, in said State of Florida; and that the said Florida Improvement Company is a corporation created by and existing under the laws of the State of Florida, and is a resident and citizen of said State, and has its chief place of business in the northern district thereof; said defendants as to all these allegations in the amended bill contained says positively that each and every
172 one of said allegations is absolutely false; that there is not and never has been a particle of truth in any of them, and that there is not and never has been any foundation or excuse or apology except in falsehood for such allegations.

The defendant, the Florida Improvement Company, denies each and every one of said allegations, and says that said corporation exists and has been created a body corporate under the laws of the State of New York only, and not of any other State; that neither the said corporation, nor the persons composing it, nor any of said persons have ever availed themselves, or attempted or made any movement to avail themselves, of, or to be associated together or become incorporated, for the transaction of business under provisions of the act of the general assembly of Florida, approved on the 8th day of August, 1868, or under any other act of the legislature of Florida. Said defendant denies that its chief place of business is at Jacksonville, in said State of Florida, or at any other place in said State, and denies that said Florida Improvement Company is a corporation created by or existing under the laws of the State of Florida, and denies that it is a resident and citizen of said State.

In support of this denial of said allegations in said amended
173 bill, the said defendant files herewith and annexes to this answer certificates from the secretary of state of the State of Flor-

ida, and from the county clerk of Duval County, Florida (in which county the amended bill alleges this defendant's chief place of business to be), under their respective official seals; that no copy of any articles of incorporation has been filed in either of their respective offices, by any officer of the corporation, which filing is, by the act of the general assembly of Florida, approved August 8th, 1868, made necessary to establish and create the corporate existence of any corporation sought to be established and created under the provisions of said act.

And of this the said defendant, the Florida Improvement Company, claims the same benefit as though it had been pleaded to the jurisdiction of the court.

And the defendants, the Florida Improvement Company, and Myron S. Mickles, jointly and severally, deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and
174 hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct. And they pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

MYRON S. MICKLES,
Called in the bill Myron S. Mickles.
EDWIN A. STUDWELL.
Vice-President of the Florida Improvement Company.

SANDERSON & L'ENGLE,
Solicitors for Respondents.

175 The answer of the defendant, the Florida Improvement Company, through Edward A. Studwell, its vice-president, was taken, this thirteenth day of April, A. D. 1871, before me, under the common seal of the said corporation, as by their said seal affixed appears.

W. A. M'LEAN,
County Judge of Duval County, Florida.

Oath, 13th day of April, A. D. 1871, came before me, Myron S. Mickles, and made oath that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same, so far as they are stated of his own knowledge are true, and so far as they are stated on information and belief, he believes them to be true.

MYRON S. MICKLES.

Sworn to & subscribed before me the 13th day of April, A. D. 1871.

W. A McLEAN,
County Judge of Duval Co., Florida.

176 OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF FLORIDA,
Tallahassee, Florida.

I, Jonathan C. Gibbs, secretary of state of the State of Florida, do certify that there is not on file in my office any copy of any articles of incorporation of the New York and Florida Lumber, Land and Improvement Company; and I do further certify that no such corporation or corporations have been created by or exist under any law of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of the State of Florida, which is the seal of my office, this thirtieth (30th) day of March, A. D. 1871.

JONATHAN C. GIBBS,
Sec. of State.

177 OFFICE OF THE COUNTY CLERK OF
DUVAL COUNTY, FLORIDA,
Jacksonville, Florida.

I, Charles L. Mather, clerk of the circuit court of Duval County, Florida, do certify that there is not on file, and that there never has been on file in my office any copy of any articles of incorporation of the New York and Florida Lumber, Land and Improvement Company, or of the Florida Improvement Company, and I do further certify that in this respect the provision contained in the third section of the act of the legislature of the State of Florida, entitled "An act to provide for the creation of corporations, and to prescribe their general powers and liabilities," which was approved August 8th, A. D., 1868, has not been complied with.

In testimony whereof I have hereunto set my hand and seal of office this 10th day of April, A. D. 1871.

CHAS. L. MATHER, *Clerk.*
By S. B. KNAPP, *D. C.*

178 *List of lands conveyed by the Board of Trustees of the Internal-Improvement Fund of the State of Florida to the Florida Improvement Company, October 11th, A. D. 1870.*

Counties.	Int. imp't.	Swamp.	Total.
	Acres.		
Suwanee	4, 718. 45	.....	4, 718. 45
Hamilton	6, 087. 28	154. 50	6, 241. 78
Volusia	80.	10, 550. 38	10, 630. 38
Lafayette	20, 073. 58	29, 181. 08	49, 254. 66
Orange	5, 243. 84	22, 348. 29	27, 592. 13
Madison	1. 509. 56	218. 50	1, 728. 06
	37, 712. 71	62, 452 75	100, 165. 46

Exhibit A.

179 EXHIBIT B.

CITY AND COUNTY OF NEW YORK,
State of New York, ss:

George W. Benson, of the city of Brooklyn, in the county of Kings, & State of New York, being duly sworn, deposes and says that he is the secretary of the "Florida Improvement Company." That in his official capacity he had full knowledge of the expenditures made by said company, as well as a general knowledge of its affairs and management. That said company have established and appointed emigrant agents in the cities of Boston, Philadelphia, New Haven, Chicago, Portland, Montreal, Quebec, Halifax, London, Liverpool, Glasgow, Dublin, Londonderry, Hamburg, Berlin, Bremen, Frankfort, Paris, Palermo, and their own office in the city of New York, and have published and distributed five thousand copies of the book entitled "Florida" in the English language, and have published five thousand copies of a free translation of such book in the German language, and

have expended more than five thousand dollars in procuring surveys and producing maps of the lands in Florida, and have collected much other useful information regarding said State, and have encouraged and promoted immigration into the State of Florida, and are continuing to do the same by furnishing reduced rates of fare to heads of families
180 and male adults wishing to emigrate who have applied to them, and in some instances have paid part of their passage-money to said State; and the number of heads of families and male adults thus assisted by this company, and who have gone to Florida under its auspices, is one hundred and seventy-nine. That said company has expended in the publication of books, obtaining and diffusing information concerning its climate, soil, and resources of the State of Florida, and in organizing for emigration to said said State, about four thousand dollars.

SEAL OF THE FLORIDA IMPROVEMENT COMPANY. (Signed) G. W. BENSON.

STATE OF NEW YORK,
City & County of New York, ss:

On the 29th day of December, A. D. 1870, before me, the subscriber, a commissioner of deeds of the State of Florida, in and for the State of New York, personally appeared G. W. Benson who subscribed the foregoing affidavit in my presence, and made solemn oaths before me that the same is true; and he did further say that he is secretary of the Florida Improvement Company, and that the seal affixed to the foregoing affidavit is the corporate seal of that company, and that it was so affixed by order of the board of trustees of that company.
181 In testimony whereof I have hereunto set my hand and affixed my official seal.

[NOTARIAL SEAL.] (Signed) WM. V. ARCHER,
Commissioner for Florida in New York.

(Indorsed:) In the U. S. circuit court, 5th circuit N. D. F. Francis Vose vs. The Florida Improvement Company et al. Answer of The Florida Improvement Company and of Myron S. Mickels. File dMay 18th, 1871. J. E. Townsend, cl'k. Sanderson & L'Engle, att'ys for respondents.

182 The several answer of Hugh A. Corley, one of the defendants to the bill of complaint, filed in the circuit court of the United States for the fifth circuit and northern district of Florida, by Francis Vose, complainant, against The Trustees of the Internal-Improvement Fund of the State of Florida, and against David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, late trustees, and against the Pensacola and Louisville Railroad Company, the Florida Canal and Inland Transportation Company, the Southern Inland Navigation Company, the New York and Florida Lumber, Land and Improvement Company, Myron S. Mickles, and Hubbard L. Hart, defendants.

This defendant reserving to himself all right of exception to said bill of complaint, for answer thereto, saith:
183 That this defendant was register of public lands for the State of Florida, and by virtue of said office was a member of the board of trustees of the Internal-Improvement Fund of said State. He entered upon the duties of said office on the first day of January,

1860, and continued in said office until the first day of July, 1868, except for about six months in 1865, when the State offices were in possession of the military authorities. During that period this defendant was also salesman of said board of trustees, and from June 8th, 1867, until July 1, 1868, he acted as treasurer ad interim. And this defendant, further answering, says: In answer to the first interrogatory this defendant says that he believes Exhibits A, B, C, D, E, & F to be correct copies, but asks that reference may be had to the published acts of the legislature in verification thereof.

To the second interrogatory this defendant, answering, says
184 that David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith were the Trustees of the Internal-Improvement Fund of Florida for some time immediately preceding the first July, 1868, and were therefore the immediate predecessors of the present board. This defendant knows nothing of the other matters enquired of in this interrogatory, as the transactions referred to occurred subsequent to his connection with the board.

To the third interrogatory, this defendant answering, says: That the amount of lands conveyed to Hubbard L. Hart was 33,006.03 acres, of the estimated value of $19,984.33. The work done by said Hart was the removal of obstructions to the navigation of the Oclawaha River, principally above Silver Spring, and it consisted mainly in removing fallen timber, cutting off overhanging trees and limbs, removing floating islands, and dredging the channel in shallow places. This de-
185 fendant was sent by the trustees shortly after the work was commenced to visit the river and learn the condition of the river, and the nature of the obstacles to navigation. After the appropriation had been expended, one of the present trustees *of* the surveyors-general proceeded up the river to ascertain its condition then, on which occasion he was accompanied by the defendant, it being desired by him that he might, from my statements and his own observation, judge more correctly of the amount of work done, and the extent to which the State and the public land had been benefited. The said Hart from time to time furnished accounts and vouchers of expenditure, which, according to my recollection, were verified under oath by D. A. Dunham, the engineer superintending the work. Said accounts and vouchers were placed among the records of the board. Of the lands so conveyed, 3,519.80 acres were of the lands originally granted by Con-
186 gress to the State as internal improvement lands. And this defendant, further answering, says that until said contract with Hart the Oclawaha River was not navigable above the mouth of Silver Spring run; that the importance of opening said navigation had been repeatedly the subject-matter of legislation, and the trustees had been authorized and urged by legislative enactments to have the work performed; that the work done by said Hart has rendered said river navigable as far as Lake Eustis, and thence to Lakes Harris and Dunham, thereby making accessible to market a large tract of good farming country; that since the commencement of navigation the trustees have sold a large quantity of lands in the vicinity of said rivers and lakes which this defendant honestly believes would not otherwise have been sold; and therefore this defendant does believe and insist that the said expenditures to said Hart did not impair the efficiency of the internal improvement fund for railroad purposes.

187 To the fourth interrogatory the defendant, answering, says that the matters therein enquired of transpired after this defend-

ant's official term, and he has no knowledge respecting them, personally or officially.

To the fifth interrogatory, the defendant answering, says that he has no recollection of any pledge or donation of land to the Pensacola and Louisville Railroad Company. This defendant is under the impression that the interrogatory refers to the grant of swamp lands to the Pensacola and Mobile Railroad and Manufacturing Company, an association which proposed the construction of a railroad from the railroad formerly known as the Alabama and Florida Railroad, to the Perdida River. If this impression is correct the defendant, answering, says that the general assembly of Florida by an act, Jan'y 16, 1866, authorizing the trustees to grant to said company alternate sections of swamp and overflowed lands to aid in construction of said road, as will appear by reference to the act. (Ch. 1488, pamp., p. 51.) This
188 defendant also respectfully refers to the 29th section of the act of January 6, 1855, respecting internal improvements as showing the reserved right of the legislature respecting swamp lands, according to the recollection and belief of this defendant said company obtained from The Trustees of the Internal-Improvement Fund a certificate showing the quantity and numbers of the swamp and overflowed lands in alternate sections lying adjacent to the proposed line of road which would accrue to said company under said grant; and this defendant, further answering, says that in May and June, 1867, The Trustees of the Internal-Improvement Fund agreed to sell certain swamp lands to the amount of 250,000 acres to the Florida Canal and Inland Transportation Company, at the rate of 5 cents per acre, when they should have completed their canal from Fernandina to St. Augustine, and from St. Augustine to Jupiter Inlet. But up to the time when this defend-
189 ant ceased to be trustee nothing had been accomplished by said company, and no sales had been made accordingly, and as this defendant is informed and believes nothing has since been done by said company.

To the sixth interrogatory this defendant, answering, says that he has no knowledge of any lands that have been drained by any of the parties defendant.

To the seventh interrogatory this defendant, answering, says that any answer specifying the amounts and quantities inquired of would have to be made from the records and accounts of the salesman and treasurer of the board, to which he has not access, and to the published accounts of sales, receipts, and disbursements, to which he respectfully refers as being, and this defendant believes, correctly drawn from the original books and records.

To eighth interrogatory this defendant answering, says that he and his cotrustees sold the Florida Railroad for the sum of $323,400; that of that amount $225,600 was invested in the purchase of 1,128
190 guaranteed first-mortgage bonds of the Florida Railroad Company, said bonds amounting to $1,128,000. That the remaining $97,800 was eposited with Moses Taylor, of New York, for the purpose of purchasing the remaining bonds of said company if they could be bought, including the past-due coupons, at not more than twenty per cent. upon the principle of said bonds. And said Taylor was afterwards instructed to invest any unexpended balance in his hands for the benefit of the sinking fund of said road in such securities as are indicated in the internal-improvement act. Of the amount so deposited with Moses Taylor he invested $21,000 in the purchase of a State bond of Florida issued for that amount to Edward N. Dickerson. What he

1860, and continued in said office until the first day of July, 1868, except for about six months in 1865, when the State offices were in possession of the military authorities. During that period this defendant was also salesman of said board of trustees, and from June 8th, 1867, until July 1, 1868, he acted as treasurer ad interim. And this defendant, further answering, says: In answer to the first interrogatory this defendant says that he believes Exhibits A, B, C, D, E, & F to be correct copies, but asks that reference may be had to the published acts of the legislature in verification thereof.

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185 fendant was sent by the trustees shortly after the work was commenced to visit the river and learn the condition of the river, and the nature of the obstacles to navigation. After the appropriation had been expended, one of the present trustees *of* the surveyors-general proceeded up the river to ascertain its condition then, on which occasion he was accompanied by the defendant, it being desired by him that he might, from my statements and his own observation, judge more correctly of the amount of work done, and the extent to which the State and the public land had been benefited. The said Hart from time to time furnished accounts and vouchers of expenditure, which, according to my recollection, were verified under oath by D. A. Dunham, the engineer superintending the work. Said accounts and vouchers were placed among the records of the board. Of the lands so conveyed, 3,519.80 acres were of the lands originally granted by Con-
186 gress to the State as internal improvement lands. And this defendant, further answering, says that until said contract with Hart the Oclawaha River was not navigable above the mouth of Silver Spring run; that the importance of opening said navigation had been repeatedly the subject-matter of legislation, and the trustees had been authorized and urged by legislative enactments to have the work performed; that the work done by said Hart has rendered said river navigable as far as Lake Eustis, and thence to Lakes Harris and Dunham, thereby making accessible to market a large tract of good farming country; that since the commencement of navigation the trustees have sold a large quantity of lands in the vicinity of said rivers and lakes which this defendant honestly believes would not otherwise have been sold; and therefore this defendant does believe and insist that the said expenditures to said Hart did not impair the efficiency of the internal improvement fund for railroad purposes.

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190 guaranteed first-mortgage bonds of the Florida Railroad Company, said bonds amounting to $1,128,000. That the remaining $97,800 was eposited with Moses Taylor, of New York, for the purpose of purchasing the remaining bonds of said company if they could be bought, including the past-due coupons, at not more than twenty per cent. upon the principle of said bonds. And said Taylor was afterwards instructed to invest any unexpended balance in his hands for the benefit of the sinking fund of said road in such securities as are indicated in the internal-improvement act. Of the amount so deposited with Moses Taylor he invested $21,000 in the purchase of a State bond of Florida issued for that amount to Edward N. Dickerson. What he

has done with the remainder is not within the knowledge of this defendant. Said bond for $21,000 was transmitted to the trustees by Mr. Taylor.

To the ninth interrogatory this defendant, answering, says, that he believes it to be true that during the late war some of the trust
191 fund was invested in Confederate bonds, but does not know what amount. This defendant knows that many of the lands were sold for Confederate currency and Florida treasury notes, and whatever amount thereof was expended at the close of the war was necessarily a total loss. This defendant further says that for several years that kind of currency was all that was in circulation in this State. Your defendant admits that it would have been for the interest of the fund to have withdrawn the lands from sale altogether, and this opinion was entertained by this defendant as far back as 1863, and Gov. Melton, and probably other members of the board, concurred with this defendant, but under the then existing circumstances it was not easy to decide with respect to the proper course to persue, and sometimes very difficult to persue the line of conduct which had been determined upon. This defendant does nevertheless say that at no time
192 within the period referred to were the trustees influenced in their investments by any desire to impair the fund, but acted according to the best of their judgment.

And this defendant, answering, says that he believes that in 1865 a part of the moneys of the trust fund was invested in bonds of the State at par, to the amount of $41,000, and in 1867 the board exchanged State scrip to about $45,000 for that amount of State bonds, but this defendant does not admit that such purchase and exchange was made in the way of an investment of the fund; the bonds were used at par in paying coupons for which the trust fund was responsible, according to the belief of this defendant, but if any were otherwise applied they were not disposed of at less than their par value, except one State bond for $1,000 which this defendant says was in the hands of W. M. Turner & Co., of Savannah, and believes to be there still.

And this defendant, further answering, says that the trustees
193 authorize Moses Taylor to purchase a certain bond of the State of Florida, payable to Edward N. Dickerson, for $21,000 and pay the interest thereof in manner and form as stated in the bill. Said bond was bought at par. This defendant is of the opinion that the bonds of the State were considerably below par at that time. Said bond is in the hands of the trustees. And your defendant further answering, says that he cannot, from his own knowledge, state what were the peculiar circumstances that induced the trustees to invest in said bond, as he was absent at the time the investment was made, but this defendant does believe that except in times of extraordinary financial embarrassment it is preferable to invest the sinking fund in our own State bonds, rendering it unnecessary to employ a foreign financial agent, and the bonds of the State of Florida are among the securities, and first named, in which such investments are directed to be made. And this defendant says that it was the opinion of the trustees at the time of the transaction that the State
194 would be fully able to pay the interest upon said bond as the same fell due; and although this defendant has not made the calculation in figures, he does believe that, if at that time the amount of the sinking fund had been invested at par in bonds bearing seven per cent. interest, and the interest invested and reinvested as the same fell due, according to the provisions of the law respecting the sinking fund,

said fund would have been sufficient for the full payment of the outstanding bonds of the Florida Railroad Company at maturity, the same being intended for the payment of the principal of said bonds; not of the interest or any part thereof. Therefore this defendant insists that if the complainant hath sustained any damage by reason of said investment, it is that the security for the ultimate payment of the principal of his bonds has been lessened, which would not have been the case had not the State been more than ordinarily embarrassed, wherefore such damage, if
195 any there be, was not occasioned by the purchase of said bond at its par value, but because the trustees made any investment at all in bonds of the State of Florida. And this defendant submits that in investing in Florida State bonds the trustees did nothing in violation of their trust. This defendant cannot answer the rest of the interrogatory, except that while this defendant was a trustee all State scrip was received in payment for lands, and said scrip was received by the holders of coupons at par in payment therefor. At that time the State scrip ranged in value at from 80 to 95 cents *in* the dollar.

To the tenth interrogatory this defendant, answering, says that the interrogatory applies only to the present trustees.

And this defendant, having fully answered, prays to be hence discharged, &c.

HUGH A. CORLEY,
Defendant.

STATE OF FLORIDA, *ss:*

I, Hugh A. Corley, do solemnly swear that the facts stated in
196 the foregoing answer, as of my own knowledge, are true, and those stated from information and recollection I believe to be true.

HUGH A. CORLEY.

Sworn to and subscribed before me this 6th March, A. D. 1871.
[SEAL.] PHILIP WALTER,
Clk U. S. Dis. C't, Northern Dist. of Fla.

(Indorsed:) F. Vose vs. Trustees Internal-Improvement Company. Answer of Hugh A. Corley to bill of complaint. Filed May 18, 1871. J. C. Townsend, clerk.

197 The joint and several answers of Harrison Reed, who is the governor of the State of Florida, Simon B. Conover, who is the treasurer of said State, and John S. Adams, who is the commissioner of immigration of said State, Trustees of the Internal-Improvement Fund of the State of Florida, defendants to the bill of complaint against them in the United States circuit court for the fifth circuit and northern district of Florida, by Francis Vose, complainant:

These defendants now and at all times hereafter saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they, these defendants, severally answering, say:

That heretofore, to wit, on the day of , A. D. 186 ,
198 the said present complainant filed and exhibited his bill of complaint in this honorable court against these defendants and their

then cotrustee, Almon R. Meek, attorney-general of said State, and their now cotrustees, Robert H. Gamble, comptroller of said State, and Frank W. Webster, surveyor-general and register of public lands of said State, praying for an account of all the moneys and property of the internal-improvement fund of the State of Florida, and of the trust fund aforesaid, and for an order and decree of this honorable court to enforce the collection and payment of all sums due and to become due to the said Trustees of the Internal-Improvement Fund and of all indebtedness and liabilities thereto; and further praying that the said Trustees of the Internal-Improvement Fund be required to pay to the said present complainant his bonds and coupons, as far as the same were due and payable, from the moneys and funds of the said trust fund as soon and as fast as the same could be done, and an equal share of said moneys and funds from time to time in proportion to the amount thereof overdue to creditors respectively holding bonds and coupons, and which were liens on the said trust fund,
199 including payments that had already been made on any of said debts; and further praying this honorable court to enjoin and restrain said Trustees of the Internal-Improvement Fund from lending or investing, appropriating, disposing of, or using any of the moneys or funds of the said trust fund and sinking fund, except in payment of the bonds and coupons aforesaid in the manner aforesaid, and expenses of the trust, until said bonds and coupons of the said complainant should be paid and satisfied, and that the said Trustees of the Internal-Improvement Fund should be adjudged to pay to the said present complainant all damages sustained by him by means of the premises, &c. And further praying this honorable court to appoint a receiver in said cause, to be empowered and authorized to demand and receive and take an account of all the moneys, securities, and funds of the said internal-improvement fund, except the land belonging to said fund; and that the said receiver be authorized to pay to the said present complainant the amount found to be due on his said coupons and interest, out of the moneys, securities, and funds so received and taken by him; and that the said Trustees of the Internal-Improvement Fund be ordered to deliver to said receiver all books, pa-
200 pers, documents, and vouchers of every kind whatsoever; and that certain conveyances to one Hubbard L. Hart, and alleged donations to certain corporations, be annulled, set aside, and the same declared subject to the lien of the said present complainant on said internal-improvement fund, &c., and claiming substantially all such rights and interests in the said internal-improvement fund of the State of Florida, of which said fund these defendants are trustees, as he, the said present complainant, now claims in and by his present bill of complaint, and in the same manner, and for the same objects and same matters, and to the same effect, as the said present complainant now prays by his said present bill.

And that these defendants, and their then cotrustee, the said Almon R. Meek, the attorney-general of said State, and their now cotrustees, Robert H. Gamble, comptroller of said State, and Frank W. Webster, surveyor-general and register of public lands of said State, appeared and put in their joint and several answers to the said former bill of complaint, and that an application was made for an injunction thereupon, which was refused, and that the said former bill and the several proceedings in the said former cause, as these defendants
201 are informed and aver, now remain depending, and as of record in this honorable court, the said cause being yet undetermined,

and, as these defendants are informed, up to this time undismissed; all of which said several matters will more fully appear by reference to the said bill, answer, and other papers in said former cause, and to which these defendants crave leave to refer in support of their said averment in this behalf; all of which said several matters these defendants do aver and insist upon in bar to the said complainant's present bill of complaint, and claim the same benefit thereof in this their answer as if they had availed themselves thereof by plea in bar to said bill.

These defendants, further answering, admit that they hold the offices respectively above named; that these defendants, with their former cotrustee, Almon R. Meek, the attorney-general of said State, and their now cotrustee and codefendants Robert H. Gamble, comptroller of said State, and Frank W. Webster, surveyor-general and register of public lands of said State, were elected and appointed to the offices held by them respectively as aforesaid, on or about the dates following, viz: Harrison Reed, governor, &c., May 6th, 1868; Robert H. Gamble, comptroller, &c., July 10, 1868; Simon B. Conover, treasurer, &c., July 21, 1868;
Frank W. Webster, surveyor-general, &c., July 29, 1868; John
202 S. Adams, commissioner of immigration, &c., January 14, 1869,
and Almon R. Meek, attorney-general, &c.; that by virtue of their said offices they became respectively, from the dates of their respective elections and appointments as aforesaid, trustees of said fund, except this defendant John S. Adams, who was constituted, ex-officio, a trustee as in said bill alleged by an act of the legislature of said State, approved February 1, 1869, but they deny that the Trustees of said Internal Improvement Fund, as in said bill alleged, are a corporation created by act of the general assembly of said State, or that said trustees, or these defendants as such trustees, are in law, equity, or otherwise responsible, liable, or chargeable as a corporation or body corporate; that their former cotrustee Almon R. Meek, attorney-general of said State, resigned his said office, and thereby ceased to be a trustee of said fund on or about the 10th day of December, 1870; that Sherman Conant was appointed to fill the vacancy occasioned by the resignation of the said Almon R. Meek on or about the 10th day of December, 1870; that the said Sherman Conant accepted said office and continued therein and to discharge the duties thereof until the adjournment of the late session of the legislature of said State, to wit, on or about the 26th day of January, 1871;
203 that J. B. C. Drew is now filling the said office of attorney-general of said State by an "ad interim" appointment made by the governor thereof, and by virtue of such appointment is now acting as their cotrustee; that these defendants were elected and appointed to office as aforesaid under the new or reconstructed State government of said State, then recently established under the reconstruction acts of the Congress of the United States; that owing to the unsettled political condition of said State for some time preceding and for some time after the inauguration of said new State government, the said defendants and their then cotrustees in the discharge of the duties cast upon them as trustees as aforesaid, and with which they had had no previous acquaintance, experienced great difficulty in obtaining full and accurate information with respect to the status of said fund or its administration by their predecessors; that their difficulties and embarrassments in this behalf were enhanced by the fact that their immediate predecessors never turned over or made to these defendants any formal or regular surrender of the said fund or furnished to these defendants any reports, accounts, lists, schedules, or statements showing its status or condition at the time when it first fell into the hands of these

204 defendants; that on account thereof in respect to many matters they were compelled to get information as best they could; that they and their then cotrustees addressed themselves at once to the new and embarrassing duties, which, by virtue of their offices, were thus devolved upon them, and they insist that under all the circumstances and with a due appreciation of the magnitude of their trust and the various and important public and private interests connected therewith, that they have discharged their duties not only in good faith, but in accordance with the spirit, object, and purpose of said trust, and they deny that they or either or any of them have been guilty of fraudulent and illegal acts and of a neglect and refusal to discharge their duty as the said complainant has in and by his said bill alleged against them. And these defendants further, severally answering, say that they insist that the said complainant is not entitled from these defendants or any or either of them to any discovery, or as against these defendants or any or either of them to any relief touching or concerning any breaches or alleged or supposed breaches of truct, occurring prior to the election or appointment of these defendants to office as aforesaid, and that if entitled to any such discovery or relief the said complainant is entitled to the same only from or against
205 those whose acts are brought into question, and who were then in control of said fund, and are or ought to be familiar with all and every of such matters, and who, as these defendants believe, are well known to said complainant and are some of them parties defendants to his said bill, and not from or against these defendants who could not have had and did not have any connection therewith, and cannot according to any principle of equity and good conscience be controlled or prejudiced in their management of said fund on account thereof or be held answerable or chargeable therefor.

These defendants, further severally answering, admit that the "Act to provide for and encourage a liberal system of internal improvement in this State" was approved by the governor thereof, as in said bill alleged, and that Exhibit A to said bill annexed is a true copy of said act; that thereby certain lands therein mentioned, and the proceeds which had accrued or were to accrue to said State from the sale thereof, were set apart and declared a distinct and separate fund, to be called the "Internal-Improvement Fund of the State of Florida," and to be strictly applied according to the provisions of said act; that by the second section there of it was, among other things, provided that, for the purpose of securing a proper application of said fund for the purposes in said
206 act declared, said lands and all the funds arising from the sale thereof after paying the necessary expenses of selection, management, and sale, were irrevocably vested in five trustees, to wit, in the governor of said State, the comptroller of public accounts, the State treasurer, the attorney-general, and the register of public lands and their successors in office, to hold the same in trust for the uses and purposes thereinafter provided; with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several States or the internal-improvement bonds issued under the provisions of said act, and drawing not less than six per cent. annual interest, also the surplus interest accruing from such investments, and to pay out of said fund, agreeably to the provisions of said act, the interest from time to time as it should become due on the bonds to be issued by the different railroad companies under authority of said act; also to receive and demand semi-annually the sum

of one-half of one per cent. (after each separate line of railroad was completed) on the entire amount of the bonds issued by said railroad company, and invest the same in stocks of the United States or State securities or in the bonds in said act provided to be issued by
207 said company; also to invest the surplus interest of said sinking-fund investment as it should accrue, and also to demand to receive from each railroad company named in said act the amount due to the Internal-Improvement Fund from said railroad company according to the provisions therein contained on account of interest on the bonds issued by said company, &c.; though for greater certainty as to the particular contents of said act these defendants crave leave to refer thereto when produced to this honorable court.

These defendants, further severally answering, admit that the Florida Railroad Company, as in said bill alleged, accepted the provisions of the said "Act to provide for and encourage a liberal system of internal improvements in this State" for so much of the line of road indicated in said act as a proper improvement to be aided from the Internal-Improvement Fund as lay between Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Keys, in East Florida, and that said company did, under its original charter and the act amendatory thereto, and in conformity with the provisions of the said "Act to provide for and encourage a liberal system of internal improvement in this State" *did* construct and build so much of said line of road, and extension as lay between the said points Amelia Island and Cedar Keys, and that under the terms of said act the
208 said Florida Railroad Company did issue a large number of coupon bonds of the character and for the amounts stated in said bill, and that these defendants are informed and believe that the said complainant is the owner and holder of one hundred and ninety-five of said bonds, and that the entire principal thereof and interest thereon, save such of the coupons as were paid in the year 1860, are still outstanding.

That they also believe it to be true that the said Florida Railroad, on account of the failure of said company to provide for the interest on the bonds issued by it as aforesaid, and the sinking fund of one per cent. per annum required by the said act, the provisions of which it had accepted as aforesaid was, in conformity to the provisions of the said act at or about the time stated in said bill, by the predecessors of these defendants the persons then holding the offices of Trustees of said Internal-Improvement Fund taken possession and sold, and that Edward H. Dickerson and associates became the purchasers thereof for about the sum *of* stated. That the said sale was made by the predecessors of these defendants, as these defendants are advised and believe, upon the conditions expressed in the said "Act to provide for and encourage a liberal system of internal improvements in this State,"
209 that the purchaser should continue the payment of one-half of one per cent. semi-annually to the sinking fund until all the outstanding bonds were discharged, under the penalty of an annulment of the contract of purchase and the forfeiture of the purchase-money paid in, and these defendants are advised that the provisions of said act in this behalf made with respect to the conditions of sale and the penalty, and forfeiture resulting from the non-compliance therewith on the part of the purchaser constitute, and are the only right, lien, or claim which the holders of outstanding bonds have upon said road. That these defendants had nothing to do with the sale of said road nor did they decide to make or in fact make any purchases of outstanding

bonds of said road after its sale or deposit any of the moneys arising from said sale in the hands of Moses Taylor, of the city of New York, or any one else.

That these defendants were not, nor were either of them, at the time of said alleged transaction trustees of the said fund. They are however informed and believe that the persons then exercising the duties of trustees of said fund did purchase, or receive as equivalent to cash from the purchase's of said road, at their pro rata of the purchase-money, bonds of the said Florida Railroad Company to the amount mentioned in said bill; they are also informed and believe
210 that the persons then discharging the duties of trustees did place the amount mentioned in said bill in the hands of the said Moses Taylor, for the purpose of purchasing and taking up the outstanding bonds at the rate mentioned, and that the said Moses Taylor did afterwards purchase some of said bonds—the precise amount they cannot here state, but are informed and believe that up to April, 1868, he had purchased or taken up two hundred and fifty-seven (257) of said bonds, and that so much of the money originally deposited with him as has not been used in purchasing said bonds or in purchasing a bond of the State of Florida payable to Edward H. Dickerson and associates, as will be hereinafter more fully stated, still remains in his hands. These defendants deny in the most positive terms that they or either of them ever received and misappropriated the sum of $200,000, or any other sum, or loaned or invested said sum or any other sum in Confederate scrip or bonds, or that they purchased with $41,000 belonging to said fund bonds of the State of Florida, or that they adopted a resolution to lend to the State of Florida $45,000 of the said fund, or that in the year 1867 they adopted any resolution with respect to the fund in the hands of the said Moses Taylor, or adopted any resolution authorizing the president of said to invest, out the funds then in the hands of the said Taylor, a sufficient amount to purchase a bond of the State of Florida payable to said Dickerson, for the principal sum of $21,000, and the interest on the same, or that they or either of them were in any manner connected with any or either of the said transactions charged and alleged in said bill as occurring prior to and during the year 1867, and prior to their several and respective appointments. That it may be true that the persons then exercising or claiming to exercise the duties of Trustees of said Internal-Improvement Fund, did, during the late war, invest or appropriate some part of said fund then under their control in Confederate scrip or bonds which have proved worthless, but these defendants insist that they are in no wise responsible therefor or chargeable therewith, and that these defendants, the present trustees of said fund, who are wholly innocent of any connection therewith, ought not to have visited upon them any of the consequences resulting from the alleged mismanagement, misappropriations, or faults of others, whose actions they could not control, and for whose conduct, as hereinbefore stated, they were in no wise responsible.

And these defendants, further severally answering, say that they, or any or either of them to the knowledge or belief of the others or other of them, do not know, and have never been informed, save by the said complainant's said bill, whether the investment in Confederate scrip
212 or bonds, or the purchase with $41,000 out of said fund of bonds of the State of Florida, was or were made as in said bill stated. They believe there was a resolution of like character and effect as that referred to in said bill, adopted by their predecessors, to lend to or

exchange with the State of Florida $45,000 in Treasury certificates; but whether said exchange or loan was made or not, these defendants, nor can any or either of them upon the knowledge, information, or belief of the others or other of them, state, but they believe that if said loan or exchange was made, it was for interest-bearing bonds of said State, and was made with a view of benefitting said fund, said Treasury certificates bearing no interest, and in conformity to the letter and spirit of said internal-improvement law with reference to its investments, &c.; and they also believe that their predecessors also adopted a resolution of like character and effect as that stated in said bill, to invest in the sinking fund so much of the money in the hands of Moses Taylor as had not, prior to August, 1867, been applied to purchasing bonds outstanding of the said Florida Railroad Company, and that said resolution was not carried into effect, and they also believe that their predecessors did, out of the fund in the hands of the said Moses Taylor, purchase a bond of the State of Florida, from Edward
213 H. Dickerson, of the amount and at or about the time stated in said bill.

That there is a bond of this character among the assets now in the possession of this defendant, John S. Adams, who is at present acting as the treasurer of said , belonging to the sinking fund of the said Florida Railroad, but as to the value of said bond at the time of its alleged purchase these defendants do not know, nor can any or either of them state, and they again reiterate that they were not then in office, and did not have, as trustees of said fund or otherwise, at that time, any connection with said alleged purchase.

And these defendants, further severally answering, say that they, these defendants are not, nor are any or either of them, to the knowledge, information, or belief of the others or other of them, nor are their now cotrustees or former cotrustee, to the knowledge, information, or belief of these defendants, indebted to the said trust-fund, nor have these defendants, or any or either of them, to the knowledge, information, or belief of the others of other of them, nor have their now cotrustees or former cotrustee participated or joined with others not trustees of said fund indebted to said fund, in fraudulent and illegal acts with respect to the said fund, as stated in said bill.

And these defendants further deny that these defendants, or any or either of them, to the knowledge, information, or belief of the others or other of them, or their now cotrustees or former cotrustee, or
214 severa'y or any or either of them, have fraudulently misapplied or wasted the lands belonging to the said fund, as in said bill stated. On the contrary, they aver that the acts and doings of the trustees of said fund since these defendants have been connected therewith in the disposal and disposition of the lands belonging to the said fund were and have been in good faith and in the exercise of the discretion vested in them by the law creating their said trust, and not without the scope of their power, or contrary to the spirit, objects, and purposes of their trust.

These defendants, further severally answering, say that they are advised and believe that the trustees of the said fund adopted a resolution to sell to the Pensacola and Louisville Railroad Company swamp and overflowed lands within six miles of each side of the line of said road upon the completion of said road, but that nothing further has been done in the matter; that the road has not been completed, and no lands have been conveyed to it, and they deny that in the act of

bonds of said road after its sale or deposit any of the moneys arising from said sale in the hands of Moses Taylor, of the city of New York, or any one else.

That these defendants were not, nor were either of them, at the time of said alleged transaction trustees of the said fund. They are however informed and believe that the persons then exercising the duties of trustees of said fund did purchase, or receive as equivalent to cash from the purchase's of said road, at their pro rata of the purchase-money, bonds of the said Florida Railroad Company to the amount mentioned in said bill; they are also informed and believe
210 that the persons then discharging the duties of trustees did place the amount mentioned in said bill in the hands of the said Moses Taylor, for the purpose of purchasing and taking up the outstanding bonds at the rate mentioned, and that the said Moses Taylor did afterwards purchase some of said bonds—the precise amount they cannot here state, but are informed and believe that up to April, 1868, he had purchased or taken up two hundred and fifty-seven (257) of said bonds, and that so much of the money originally deposited with him as has not been used in purchasing said bonds or in purchasing a bond of the State of Florida payable to Edward H. Dickerson and associates, as will be hereinafter more fully stated, still remains in his hands. These defendants deny in the most positive terms that they or either of them ever received and misappropriated the sum of $200,000, or any other sum, or loaned or invested said sum or any other sum in Confederate scrip or bonds, or that they purchased with $41,000 belonging to said fund bonds of the State of Florida, or that they adopted a resolution to lend to the State of Florida $45,000 of the said fund, or that in the year 1867 they adopted any resolution with respect to the fund in the hands of the said Moses Taylor, or adopted any resolution authorizing the president of said to invest, out the funds then in the hands of the said Taylor, a sufficient
211 amount to purchase a bond of the State of Florida payable to said Dickerson, for the principal sum of $21,000, and the interest on the same, or that they or either of them were in any manner connected with any or either of the said transactions charged and alleged in said bill as occurring prior to and during the year 1867, and prior to their several and respective appointments. That it may be true that the persons then exercising or claiming to exercise the duties of Trustees of said Internal-Improvement Fund, did, during the late war, invest or appropriate some part of said fund then under their control in Confederate scrip or bonds which have proved worthless, but these defendants insist that they are in no wise responsible therefor or chargeable therewith, and that these defendants, the present trustees of said fund, who are wholly innocent of any connection therewith, ought not to have visited upon them any of the consequences resulting from the alleged mismanagement, misappropriations, or faults of others, whose actions they could not control, and for whose conduct, as hereinbefore stated, they were in no wise responsible.

And these defendants, further severally answering, say that they, or any or either of them to the knowledge or belief of the others or other of them, do not know, and have never been informed, save by the said complainant's said bill, whether the investment in Confederate scrip
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exchange with the State of Florida $45,000 in Treasury certificates; but whether said exchange or loan was made or not, these defendants, nor can any or either of them upon the knowledge, information, or belief of the others or other of them, state, but they believe that if said loan or exchange was made, it was for interest-bearing bonds of said State, and was made with a view of benefitting said fund, said Treasury certificates bearing no interest, and in conformity to the letter and spirit of said internal-improvement law with reference to its investments, &c.; and they also believe that their predecessors also adopted a resolution of like character and effect as that stated in said bill, to invest in the sinking fund so much of the money in the hands of Moses Taylor as had not, prior to August, 1867, been applied to purchasing bonds outstanding of the said Florida Railroad Company, and that said resolution was not carried into effect, and they also believe that their predecessors did, out of the fund in the hands of the said Moses Taylor, purchase a bond of the State of Florida, from Edward
213 H. Dickerson, of the amount and at or about the time stated in said bill.

That there is a bond of this character among the assets now in the possession of this defendant, John S. Adams, who is at present acting as the treasurer of said , belonging to the sinking fund of the said Florida Railroad, but as to the value of said bond at the time of its alleged purchase these defendants do not know, nor can any or either of them state, and they again reiterate that they were not then in office, and did not have, as trustees of said fund or otherwise, at that time, any connection with said alleged purchase.

And these defendants, further severally answering, say that they, these defendants are not, nor are any or either of them, to the knowledge, information, or belief of the others or other of them, nor are their now cotrustees or former cotrustee, to the knowledge, information, or belief of these defendants, indebted to the said trust-fund, nor have these defendants, or any or either of them, to the knowledge, information, or belief of the others of other of them, nor have their now cotrustees or former cotrustee participated or joined with others not trustees of said fund indebted to said fund, in fraudulent and illegal acts with respect to the said fund, as stated in said bill.

And these defendants further deny that these defendants, or any or either of them, to the knowledge, information, or belief of the others or other of them, or their now cotrustees or former cotrustee, or
214 several'y or any or either of them, have fraudulently misapplied or wasted the lands belonging to the said fund, as in said bill stated. On the contrary, they aver that the acts and doings of the trustees of said fund since these defendants have been connected therewith in the disposal and disposition of the lands belonging to the said fund were and have been in good faith and in the exercise of the discretion vested in them by the law creating their said trust, and not without the scope of their power, or contrary to the spirit, objects, and purposes of their trust.

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bonds of said road after its sale or deposit any of the moneys arising from said sale in the hands of Moses Taylor, of the city of New York, or any one else.

That these defendants were not, nor were either of them, at the time of said alleged transaction trustees of the said fund. They are however informed and believe that the persons then exercising the duties of trustees of said fund did purchase, or receive as equivalent to cash from the purchase's of said road, at their pro rata of the purchase-money, bonds of the said Florida Railroad Company to the amount mentioned in said bill; they are also informed and believe
210 that the persons then discharging the duties of trustees did place the amount mentioned in said bill in the hands of the said Moses Taylor, for the purpose of purchasing and taking up the outstanding bonds at the rate mentioned, and that the said Moses Taylor did afterwards purchase some of said bonds—the precise amount they cannot here state, but are informed and believe that up to April, 1868, he had purchased or taken up two hundred and fifty-seven (257) of said bonds, and that so much of the money originally deposited with him as has not been used in purchasing said bonds or in purchasing a bond of the State of Florida payable to Edward H. Dickerson and associates, as will be hereinafter more fully stated, still remains in his hands. These defendants deny in the most positive terms that they or either of them ever received and misappropriated the sum of $200,000, or any other sum, or loaned or invested said sum or any other sum in Confederate scrip or bonds, or that they purchased with $41,000 belonging to said fund bonds of the State of Florida, or that they adopted a resolution to lend to the State of Florida $45,000 of the said fund, or that in the year 1867 they adopted any resolution with respect to the fund in the hands of the said Moses Taylor, or adopted any resolution authorizing the president of said to invest, out the funds then in the hands of the said Taylor, a sufficient amount to purchase a bond of the State of Florida payable to said Dickerson, for the principal sum of $21,000, and the interest on the same, or that they or either of them were in any manner connected with any or either of the said transactions charged and alleged in said bill as occurring prior to and during the year 1867, and prior to their several and respective appointments. That it may be true that the persons then exercising or claiming to exercise the duties of Trustees of said Internal-Improvement Fund, did, during the late war, invest or appropriate some part of said fund then under their control in Confederate scrip or bonds which have proved worthless, but these defendants insist that they are in no wise responsible therefor or chargeable therewith, and that these defendants, the present trustees of said fund, who are wholly innocent of any connection therewith, ought not to have visited upon them any of the consequences resulting from the alleged mismanagement, misappropriations, or faults of others, whose actions they could not control, and for whose conduct, as hereinbefore stated, they were in no wise responsible.

And these defendants, further severally answering, say that they, or any or either of them to the knowledge or belief of the others or other of them, do not know, and have never been informed, save by the said complainant's said bill, whether the investment in Confederate scrip
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exchange with the State of Florida $45,000 in Treasury certificates; but whether said exchange or loan was made or not, these defendants, nor can any or either of them upon the knowledge, information, or belief of the others or other of them, state, but they believe that if said loan or exchange was made, it was for interest-bearing bonds of said State, and was made with a view of benefitting said fund, said Treasury certificates bearing no interest, and in conformity to the letter and spirit of said internal-improvement law with reference to its investments, &c.; and they also believe that their predecessors also adopted a resolution of like character and effect as that stated in said bill, to invest in the sinking fund so much of the money in the hands of Moses Taylor as had not, prior to August, 1867, been applied to purchasing bonds outstanding of the said Florida Railroad Company, and that said resolution was not carried into effect, and they also believe that their predecessors did, out of the fund in the hands of the said Moses Taylor, purchase a bond of the State of Florida, from Edward
213 H. Dickerson, of the amount and at or about the time stated in said bill.

That there is a bond of this character among the assets now in the possession of this defendant, John S. Adams, who is at present acting as the treasurer of said , belonging to the sinking fund of the said Florida Railroad, but as to the value of said bond at the time of its alleged purchase these defendants do not know, nor can any or either of them state, and they again reiterate that they were not then in office, and did not have, as trustees of said fund or otherwise, at that time, any connection with said alleged purchase.

And these defendants, further severally answering, say that they, these defendants are not, nor are any or either of them, to the knowledge, information, or belief of the others or other of them, nor are their now cotrustees or former cotrustee, to the knowledge, information, or belief of these defendants, indebted to the said trust-fund, nor have these defendants, or any or either of them, to the knowledge, information, or belief of the others of other of them, nor have their now cotrustees or former cotrustee participated or joined with others not trustees of said fund indebted to said fund, in fraudulent and illegal acts with respect to the said fund, as stated in said bill.

And these defendants further deny that these defendants, or any or either of them, to the knowledge, information, or belief of the others or other of them, or their now cotrustees or former cotrustee, or
214 severally or any or either of them, have fraudulently misapplied or wasted the lands belonging to the said fund, as in said bill stated. On the contrary, they aver that the acts and doings of the trustees of said fund since these defendants have been connected therewith in the disposal and disposition of the lands belonging to the said fund were and have been in good faith and in the exercise of the discretion vested in them by the law creating their said trust, and not without the scope of their power, or contrary to the spirit, objects, and purposes of their trust.

These defendants, further severally answering, say that they are advised and believe that the trustees of the said fund adopted a resolution to sell to the Pensacola and Louisville Railroad Company swamp and overflowed lands within six miles of each side of the line of said road upon the completion of said road, but that nothing further has been done in the matter; that the road has not been completed, and no lands have been conveyed to it, and they deny that in the act of

adopting this resolution the said trustees violated the law of their trust, or in any manner prejudiced the rights of the complainant, and they deny that the said trustees have made any donations of lands to the said Pensacola and Louisville Railroad Company, as in said bill stated.

215 These defendants, further severally answering, say that a resolution was adopted by the immediate predecessors of these defendants on or about the 26th day of October, A. D. 1867, a copy of which they annex hereto, marked Exhibit A, and pray that the same may be taken and considered as a part of this their answer; that this is the resolution to which they are advised the said complainant refers in his said bill, as a resolution to grant certain swamp, overflowed, and internal-improvement lands to one Hubbard L. Hart; that the said resolution having been previously adopted before these defendants, or the , with which they are connected, came into office, and the said Hubbard L. Hart having in part performed, as these defendants are advised and believe, his contract thereunder, and having already received a conveyance of a large portion of the land to which he was entitled, and believing it to the interest of the said fund to complete and carry out in good faith the provisions of the said resolution, a conveyance was made to the said Hart for the balance of the lands to which he was entitled; that before completing the said contract with the said Hart, their cotrustee, Frank W. Webster, surveyor-general, &c., was sent by the trustees to inspect and examine the work done by the said Hart in cleaning out said river; that he made such examination, and upon a favorable report from him and upon satisfactory

216 proof from the said Hart of his expenditure in said work, the said trustees felt bound to carry out the resolution adopted by their predecessors as aforesaid; that the labor and expenditure of the said Hart were, as these defendants are informed and believe, estimated at cash prices, and the lands conveyed to him were conveyed and sold to him at the same prices that they were sold to others, no discrimination being made in favor of the said Hart in this respect; that as results following their action in this behalf, one hundred miles at least of the said Ocklawaha River has, for the first time, been made navigable by steam; that boats are now running up and down said river; that large bodies of swamp and overflowed lands have been drained and relieved from inundation; that a new and valuable trade has been opened up into a comparatively new and unsettled country by the communication thus established, inducing immigration, and thereby bringing into the market and enhancing the value of the lands belonging to said fund; that the security or claim of the said complainant, instead of being prejudiced or injured, has been advantaged and made more valuable; and these defendants insist that in carrying out the resolution adopted by their predecessors aforesaid, the trustees acted not only in accord-

217 ance with their duty and within the scope of the powers given to and vested in them by the law of their trust, but in accordance with the legal and equitable obligations resting upon them to complete and carry out, upon their part, in good faith, a contract already in great part performed by the other party thereto.

That this contract with the said Hart is the only contract or agreement respecting the lands of the said fund which has been fully completed and ended since the present trustees have been in office. These defendants further, severally answering, say that they, or either, or any of them are not informed save by the complainant's said bill of the adoption or existence of any such resolution or contract as that therein

referred to with the Florida Canal and Inland Transportation Company; that if any such resolution was adopted, it was adopted before these defendants came into office; that no such resolution or any resolution concerning said company has been adopted by the trustees of said fund since these defendants or either of them have been connected therewith; they are satisfied that no such resolution was ever carried into effect by their predecessors, and they know that these defendants have taken no action whatever to carry out any such resolution or contract with said company; they believe that if any such resolution was
218 adopted, or any such sale contemplated, it has long since been entirely abandoned, as neither the said company or any one in its behalf has ever, in any way, brought the matter to the attention of these defendants.

These defendants further, severally answering, say that the trustees of said fund have conditionally deeded or conveyed to the corporation mentioned in said bill as the Southern Inland Navigation and Improvement Company several hundred thousand acres of swamp and overflowed lands, the precise quantity they cannot now state, on the eastern coast of the State, the lands to be sold, and the proceeds thereof to be paid over to the said company on the progressive completion of the work, and only as it is completed; and that upon the stoppage of the work, or its abandonment, the lands are to revert to the fund; that the work is a canal from the lower St. Johns River to Biscayne Bay, to be completed according to contract in the shortest possible time, and within fixed limits, and when completed to be navigable for steamboats; that the opening and building of said canal will redeem from partial inundation and largely enhance the value of adjacent and neighboring lands belonging to said fund; that no lands except swamp and overflowed lands have been conveyed as aforesaid. They insist
219 that the action of the trustees in this behalf has not in any respect been illegal, fraudulent, or prejudicial to the rights of said complainant, or any one else having any claim upon said fund; that such action has been within the legitimate exercise of the powers and discretion vested in them, and in furtherance of the primary objects and purposes of the trust; that the aiding and encouragement of works of improvement of this character through sections and portions of country where without such works inhabitation and settlement could not be induced, is the only way by which the land could be brought into market and made available for any purpose; that without such measures to effect its drainage and reclamation where it is possible to drain and reclaim, hundreds of thousands of acres of the land belonging to said fund would forever remain entirely worthless; that the said complainant, on account of his alleged large interest in the lands belonging to said fund as the source to which he must necessarily look for the security and ultimate payment of his coupons, cannot be otherwise than greatly benefitted by works of this character, and these defendants believe and aver that he has been so benefitted. These defendants, further severally answering, say that the Florida Lumber, Land and
220 Improvement Company referred to in said bill was incorporated by the legislature of the State of New York, and, as these defendants aver, owes its corporate existence entirely to the said State of New York; that they are informed and believe that the corporate name of said company in the original act of incorporation, to wit, "The Florida Lumber, Land and Improvement Company," has been changed by an act of the legislature of the said State of New York to that of the "Florida Improvement Company;" they are informed and believe

that the said company, under its contract with the trustees of said fund, has selected some 300,000 acres of land; that said company has paid for 100,000 acres of land in past-due coupons, for the payment of which said lands were pledged, upwards of $10,000; and that 100,000 acres of land have been conveyed to said company under its contract with the trustees of said fund, and no more; that the payments were made to the treasurer of said on the 11th day of October, 1870. the coupons being received at par; that the land selected by said company and conveyed to it as aforesaid were almost exclusively swamp and overflowed lands; that it is impossible now to state the exact amount and locality of each; that to do this would require a great deal of time and be a most burdensome expense, besides these defendants cannot give
221 accurate information in the absence of their codefendant and co-trustee, Frank. W. Webster, surveyor-general, &c.; that the said Frank W. Webster, surveyor-general, &c., is the proper custodian of all the books, records, maps, &c., concerning or belonging to the lands of said fund, and occupies, as these defendants are informed, the same position and relation to the present trustees that the register of public lands under the former State government occupied to the prior trustees; that the said Frank W. Webster has been absent from the State since on or about the first of February last, and is now, at the time of the preparation of this answer, still absent; that the absence of the said Webster has been occasioned, as these defendants are informed and believe, by the extreme illness of his wife; that his absence has been one of the causes which has prevented these defendants from putting in their answer to the said bill of complaint at an earlier day, inasmuch as these defendants could not answer as fully and completely with respect to the land matters of said fund in his absence as if he was present with his assistance and information; that nowithstanding the fact that these defendants have access to the books and papers connected with the land matters of said fund, yet in the absence of the said Webster, not being as familiar with the books and papers in
222 his office, and specially belonging to his department, as he is, they could not, even if at all, without a great deal of labor and the expenditure of a great deal of time, answer accurately and precisely as to certain of the matters inquired of in said bill.

These defendants, further severally answering, say that with respect to the Florida Lumber, Land and Improvement Company, otherwise called the Florida Improvement Company, that they are informed and believe that the said company has an office in the city of Jacksonville, in this State, and that one Mickles was its agent at that place, but that one E. C. Stadwell is now its agent; that they are further informed that the capital of said company was originally $2,500,000, but they are informed and believe that the capital of said company has been reduced to $25,000, and that this latter sum or capital has all been paid in. They are not informed where or in what this capital consists, but are informed and believe that the said company has expended upwards of $50,000 in carrying out its contract. These defendants, further severally answering, deny that the action of the trustees of said fund in entering into and carrying out in part the contract with said last-named company, as aforesaid, has been illegal or fraudulent, or in any manner in violation of their trust, or prejudicial to the rights or interests
223 of the said complainant.

These defendants, further severally answering, say that, under the sixteenth section of the said act to provide for and encourage a liberal system of internal improvement in this State, the trustees of

said fund are invested by law with the discretion and power to fix the price of the public lands included in their trust, having due regard to their location, value for agricultural purposes, or on account of timber on naval stores, and to make such arrangements for drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the Internal-Improvement Fund and the settlement and cultivation of the land, and further authorizing and empowering the said trustees to encourage actual settlement and cultivation of said land by allowing pre-emptions under such rules and regulations as they should deem advisable; providing, however, that in no case should a pre-emption for more than a section of land be granted to any one settler. That under the power and authority thus given by law to the trustees of said fund, all prior trustees since the first creation of said fund, and the present trustees have always claimed to exercise, and have exercised without objection or complaint from any of the parties in interest, so far as these defendants are advised, the right to fix the
224 *the* price of the lands included in the trust and to alter, change, and vary the same from time to time as in their judgment they deemed best for said fund, having due regard to location, value, &c. That in some instances it has been found that the prices fixed in the first instance were too low or too high, owing to the settlement of improvements of certain sections or the decrease in prosperity of other sections. That in all case' the trustees, as these defendants are informed and believe, have endeavored, in the exercise of the judgment and discretion confided to them by the law, to regulate the prices of the lands so as best to promote the interest of said fund, enhance its value, and increase the security of parties having a claim thereupon, that they have felt themselves fully authorized, and never doubted their right, to make arrangements for the drainage of the swamp and overflowed lands belonging to said fund, by paying for such drainage and improvement in lands of the fund, & in like manner they have felt themselves fully authorized and empowered to make such arrangements and give such inducements as would encourage actual settlement of the lands belonging to said fund, the drainage and settlement of said lands, as they allege, being the primary object of the grant to the State, and one of the chief duties with which they are charged by the
225 law creating the trust, a duty requiring extensive, prompt, and continued action; that one of the leading objects always kept in view in the administration of said fund was by every legitimate means and proper arrangements to bring the lands into notice, reclaim and redeem from overflow and inundation in all cases where practicable, and where an advantageous contract to effect this could be made, induce settlement, and thus make the lands more valuable, to the end that the time might be hastened when the fund would be relieved and released from all present claims upon it, and could be used for new works of internal improvement calculated to promote the welfare and prosperity of the State.

These defendants further, severally answering, say that they are not advised or informed of the purpose of the legislature of the State of Florida in creating at the first session thereof sundry corporations, save what are indicated in and by the acts of incorporation themselves; that they have no reason to believe, or just ground to suppose that the legislature desired or intended, by the passage of said acts, to enable any one to perpetrate a fraud upon said fund, and as to the trustees having previously made fraudulent grants of the land of said fund, which operated as an inducement to such legislation, they

226 wholly deny every and all the allegations in this behalf in the said bill contained.

These defendants, further severally answering, say that they do not believe that any of the parties defendant to said bill of complaint with whom the trustees have entered into contracts respecting the land of said fund as aforesaid had any notice whatever or any reason to suspect that the action of the trustees in that behalf was illegal and fraudulent as in said bill alleged. On the contrary, so far as these defendants are informed, they believed that the parties so contracting with said trustees acted in good faith, and upon the belief and advice that their contracts were fully authorized; and it was the impression and belief of these defendants and each of them at the time that the same was binding upon both parties, otherwise they would not have taken such action. These defendants, further, severally answering, say that they admit that these defendants, the present trustees, have not demanded, and that the purchasers of the said Florida Railroad have not paid the sinking fund of one-half of one per cent. semi-annually on the entire amount of the bonds issued by the said Florida Railroad Company; that they have not demanded or required of the purchasers of said road the payment of the sinking fund aforesaid on any greater amount of bonds than those outstanding at the time such payment
227 was to be made and in this respect they allege that they have conformed to the precedent of their predecessors, and as they are advised to their duty and the law in that behalf, and these defendants deny that it is their duty or that they are required by the "Act to provide for and encourage a liberal system of internal improvement in this State," to exact from or compel the purchasers of the said Florida Railroad to pay the sinking fund aforesaid on the entire issue of bonds ever made by said company under said internal-improvement act, when nearly the whole thereof have been taken up, purchased, surrendered, and cancelled, or that it is their duty to require or exact the payment of said sinking fund or of any of said bonds except such thereof as may be outstanding at the time the payment to the sinking fund as aforesaid is to be made. That the sinking fund of the said Florida Railroad which has accrued and become due and payable by the purchasers of said road since the present trustees have been in control of said fund, has been fully paid except about $; that the said purchasers are ready to pay and settle this amount as soon as certain setts-off claimed by them against said sinking fund can be adjusted. That the said complainant instituted a suit in the supreme court of
228 the State of New York to recover and get possession of the sinking fund of said road deposited by their predecessors with Moses Taylor as hereinbefore stated; that the present trustees, on account of this action on the part of the said complainant, were compelled to employ counsel to defend said suit; that the said Edward H. Dickerson, the purchaser from whom said sinking fund was due, was employed by the trustees and authorized to represent them in the defence of said suit in New York; that in so doing very considerable expense for counsel fees and costs of court was incurred, and that the said Edward H. Dickerson, by whom such counsel fees and costs were paid, amounting to about $1,500, claims that the same is a just and legitimate sett-off to the demands against him on the sinking-fund account, having been necessarily incurred and made in the protection and defense of the said sinking fund itself; that the said trustees were fully sustained in their defense of said suit, the decision and judgment of said court being in their favor; that but for this vexatious and ex-

pensive proceeding on the part of said complainant the whole of the sinking fund from the said Florida Railroad would have been paid as it fell due, and that as soon as this matter is adjusted it will be promptly paid, there being no danger of its loss.

229 These defendants, further severally answering, say that they admit that the said complainant did address letters to D. L. Walker, one of the predecessors of these defendants, and to this defendant Harrison Reed, as in said bill set forth. These defendants, further answering say, that they deny that the trustees have in any manner defrauded or injured the said complainant, or they have in any manner discriminated against him in their management of said fund; on the contrary, they aver that they have shown every disposition, and made every effort in their power to meet and adjust all his claims upon said fund. That it was at the instance of the said complainant, as these defendants are informed and believe, that the trustees consented to take past-due coupons in payment for the lands of said fund; the said complainant having a large amount of coupons, and desiring to make them available for this purpose, so as to realize on them at once, without awaiting the sales of the land which would require a great many years; that the said complainant is fully advised that the trustees have no other means of paying his said coupons, except by paying him in land; that they are willing, upon fair and reasonable terms, to pay him in this way, and have offered to do so; if unwilling to take lands, which constitute the only fund to which he can look for the payment of his coupons, under the law, it is not their fault, and if the said complainant continues to place obstacles in the way of their arrangement for the drainage and improvement of the lands so as to induce settle-

230 ment, bring to market, and enhance their value, they cannot and do not hope to be able to realize any very great amount from the sale of lands, at least, for many years to come; that while the State of Florida has recuperated as rapidly from the effects of the late war as, perhaps, any of the Southern States, and now gives as fair promise for further prosperity, yet there has not been upon the part of the people living in the State, owing to the scarcity of money for investments, and to the fact that most of them already possessed as much land as they desired, any very great demand for lands to be paid for in cash; that to facilitate the sale of the lands belonging to said fund, and to induce persons to buy, and settle upon them, when they would not otherwise have done so, the trustees, with a view of benefitting the fund, took in payment for some of the land sold, what is commonly called State scrip, being warrants drawn by the comptroller or the treasurer of the State, or certificates of indebtedness, issued by the treasurer of the State, which were convertible into interest-bearing bonds of the State, and with which they could, as they have done, buy up coupons which were a charge upon the fund.

That the trustees have been willing, as far as they were able, to take up the past-due coupons held by the said complainant, and have offered to do so, but that the said complainant has refused to take State scrip, while others have received such scrip for past-due coupons held by them, and the trustees have thus been enabled to discharge and relieve the fund of a portion of the charge upon it in this way; they insist that in this matter they have not committed a breach

231 of trust or in any way injured or impaired the rights of the said complainant; they further aver that the trustees have, as far as able with the means in hand and with honesty and impartiality to all, paid and satisfied all the just claims and demands against said fund. These

defendants, further severally answering, say that they deny that either under the said act of June 6, 1855, or under any other act or law, that they are, as in said bill charged, a corporation, or accountable as such; that they are advised and believe that none of their predecessors, from the passage of said act down to time of the installation of these defendants into office ever acted or claimed to act in the capacity of a corporation; that The Trustees of said Internal-Improvement Fund have never had or used a corporate seal; that all the conveyances and instruments under seal executed by them have been executed by each trustee signing his own name and affixing his own private seal or scrawl thereto; that they are advised and believe that the certificates or endorsements on the very bonds which the complainant claims to hold was made by each individual trustee signing his own name thereto; that shortly after the passage of said internal-improvement law, as these defendants are informed and believe, the persons then first acting as trustees thereunder were advised by very eminent counsel that they were simply trustees charged with the administration of a public trust and that they have always acted under that opinion and belief; that in suits in the
232 circuit and supreme court, the latter the court of ultimate resort in this State, the said trustees were made, treated, and considered as parties thereto simply as trustees and not as a corporation.

These defendants, further severally answering, say that there are others creditors of said fund besides the said complainant who hold coupons and are entitled with the said complainant to be paid pari passu out of said fund. That the coupons so held by these other creditors, according to the best information these defendants can at present obtain, amount to several hundred thousand dollars, and that in all respects they rest upon an equal equity and are an equal charge upon the lands of said fund; that the trustees have very recently proposed to the said complainant to pay the entire amount of his past-due coupons in lands belonging to said fund or to issue to him what are called land floats to be located on the land of said fund, said floats to be assignable, thus giving to them a market value and placing the said complainant in a position to realize on them at once if he did not desire himself to take lands; that they have also endeavored to effect a settlement with said complainant of all his demands against the trustees on account of the principal and interest of his bonds upon what they believe was a fair and just basis, but that the said complainant has refused to accede to any of their propositions for settlement and especially to take lands for his coupons when he well knows that this is all the trustees have to give him in
233 settlement, setting up as an excuse for his conduct in this behalf that if he should take lands he would be compelled to pay taxes on them, &c., &c. That the trustees are now willing to take the past-due coupons of the said company in payment for the lands belonging to said fund from time to time as the said complainant may desire to invest them in lands, or they are willing to sell him at one time in a body and at reasonable prices, having due regard to the interests of others who have a claim upon said lands, enough of said lands to pay and take up all the past-due coupons held by him, but they are not willing to surrender to him the whole fund without regard to the rights of others who have an equal claim upon it and without regard to the rights of the State of Florida, who is entitled to the remainder after the present claims upon it are satisfied, and then take upon themselves the trouble, expense, and annoyance of administering the fund for his especial benefit. These defendants, further severally answering, say that it is not true, as alleged in the amendment to said complainant's

said bill of complaint, that the Florida Lumber, Land and Improvement Company created under the laws of the State of New York, also exists and has been created under the laws of the State of Florida, a body corporate. That they are informed that there is a corporation of very nearly the same name for the sale of lands belonging to the
234 Florida Railroad with its chief place of business at Fernandina, to which, perhaps, the said complainant may refer, but that as hereinbefore stated the said New York corporation owes its corporate existence entirely to the State of New York, and is a citizen only of that State and is not a citizen of the State of Florida.

These defendants further severally answering, say that a proposition was submitted in behalf ef the Great Southern Railway Company to the trustees of said fund by A. C. Osborn, president of said company, on or about the 24th day of November, 1870. That this proposition embraced the drainage and reclamation of certain of the swamp and overflowed lands belonging to said fund lying along the line of said road, and that in consideration for such drainage and the effect of such drainage in inducing settlement and enhancing the value of the *contagious* lands belonging to said fund, the said company asked for a conveyance, upon certain conditions, of a portion of the swamp and overflowed lands. That this proposition was favorably considered by some of the trustees of said fund, while it was objected to by others, that two of the said trustees, to wit, this defendant, Harrison Reed, and this defendant, John S. Adams, signed a deed or paper purporting to be a deed to the said company, dated on or about the 1st day of December, 1870, for 102,000 acres of said lands, conditioned, however, that if the said company did not within eighteen months from the 24th day of November, 1870, relieve the said lands from liability
235 to overflow, then the said lands to revert to the said fund. That the said deed or paper purporting to be a deed has never been signed by any of other trustees of said fund, and without receiving the sanction and signatures of the other trustees or a majority of the whole number of trustees, the said deed is, as these defendants are advised, wholly invalid for the purpose of passing the title to said lands out of the trustees and that the title to the same is still vested in them, and that the trustees do not now hold or regard the conveyance as binding upon them or have taken or propose to take any further action in the premises. These defendants insist, however, that if the propositions made by the said Great Southern Railway Company had been carried out, it would have resulted in great benefit to the fund by relieving a large portion of the swamp and overflowed lands belonging thereto from inundation, and their action in connection with the same as hereinbefore stated, is not, they maintain, in any way a breach of trust, and cannot in any way affect injuriously the rights of the said complainant or any one else having an interest in said fund.

236 To the first interrogatory these defendants, severally answering, say that they believe that the exhibits mentioned therein were correct copies, &c.

To the second interrogatory these defendants, severally answering, say that the said David S. Walker, C. H. Austin, Hugh A. Corlay, John Beard, and John B. Galbraith were the immediate predecessors of the present trustees; that the New York and Florida Lumber, Land and Improvement Company, the name of which, as hereinbefore stated, has been changed to the "Florida Improvement Company," is a New York corporation and owes its corporate existence entirely to the State of New York,

as these defendants were informed and believe; that there is a Florida company of very nearly the same name, with an office and location in Fernandina in said State, for the disposal of land belonging to the Florida Railroad Company, but that the New York company above mentioned has never been incorporated in Florida; that the said New York company has an office and an agent in the city of Jacksonville; that Myron S. Mickles was its agent, that E. C. Stendwell is now its agent; do not know whether it has other agents in Florida; the amount of its capital at the date of its incorporation was, as these defendants are informed, $2,500,000; are now informed and believe that its capital has been reduced to $25,000, and that the whole of this has been paid in;
237 cannot state where its capital is or in what it consists; it has, as hereinbefore stated, located and selected, under its agreement with the trustees, according to the best information which these defendants can now obtain, about 300,000 acres of land; that it has paid $10,000 in past-due coupons for 100,000 acres of land; that said payment in coupons was made to the secretary of the trustees of said fund on the 11th day of October, 1870; that said coupons were taken at par; that the lands were selected almost exclusively from the swamp and overflowed lands; that, as hereinbefore stated, they cannot now state which were selected from the internal-improvement lands, which consisted originally of 500,000 acres, or which were selected from what are called the swamp and overflowed lands, nor can they now give the locality of each or either class of said lands; that they do not know at what price it is offering its lands, nor are they able to state whether it has or not drained any of such lands. They are informed and believe that said Mickles has bought lands from said fund at the price fixed or prevailing at the time of purchase or for the same price that other persons could have bought the same lands for; they cannot now state of what class or how many acres were purchased by him from said fund.

To the third interrogatory these defendants, severally answering, say that there has been conveyed to the said Hubbard L. Hart about
238 $21,000 dollars' worth of land belonging to said fund under the agreement hereinbefore referred to as made with him by their predecessors, a copy of which is filed with this answer, marked Exhibit A. The precise quantity of acres they cannot now, in the absence of their cotrustee and codefendant, Frank W. Webster, surveyor-general, &c., state. The land conveyed to him were sold and conveyed at the same prices that they were sold and conveyed to others, the swamp and overflowed lands at fifty cents, and the internal-improvement lands at their estimated value, varying from one dollar and twenty-five cents to five dollars per acre. The work done by said Hart was estimated at cash prices; that they are informed that the said Hart expended upwards of $21,000 on said work; that the said Hart did furnish accounts and vouchers for expenditures in said work. Upon examination they find among the papers belonging to said trust fund, accounts, and vouchers for such expenditures, true copies of which they annex to their answer, marked Exhibits B, D, C, E, and F; these accounts, as will be seen by reference thereto, are duly sworn to by credible persons; that as hereinbefore stated, the final settlement with said Hart was not made until the work done by him was personally inspected, examined, and favorably reported upon by the said Frank W. Webster, surveyor-general, &c.; that of the lands conveyed to said Hart they are informed
239 and believe that about $3,519\frac{80}{100}$ acres were internal-improvement lands; and as to all and singular, the other matters enquired of in said interrogatory with respect to the lands conveyed to the said

Hart, these defendants have hereinbefore answered the same as fully and completely as they, or either or any of them are able to do.

To the fourth interrogatory these defendants, severally answering, say that they have already, by what has been hereinbefore stated, answered said interrogatory as fully and completely as they are, or either or any of them are, able to answer the same.

To the fifth interrogatory these defendants, severally answering, say that they have already, by what has been hereinbefore stated, answered interrogatory as fully and completely as they, or either or any of them are able to answer the same.

To the sixth interrogatory these defendants, severally answering, say that they have now no means of forming an estimate of the number of acres of land drained, or the cost of such drainage. To enable them to do this, they would be compelled, either personally or through an agent, to inspect and examine the lands, which would require much time. The only contract completed is the contract made with Hubbard L. Hart by the immediate predecessors of these defendants, and which the present trustees carried out as hereinbefore stated; these
240 defendants are informed and believe that the lands along each side of the Ocklawaka River for one hundred miles have been greatly relieved from inundation on account of the work done by said Hart; but to what extent these defendants cannot, without an examination and report, undertake to say.

To the seventh interrogatory these defendants, severally answering, say that they do not know nor are they informed as to how much was received per annum by their predecessors from sale of trust lands; for information on this point, as well as to the amount received per annum by the present trustees they respectfully refer to the published reports of the trustees accompanying the governor's message to be found in the documents accompanying the journals of the senate and house of representatives of the legislature of said State, and as public documents, are accessible to the said complainant and all others interested. The predecessors of the present trustees, and the present trustees have published annually in connection with the governor's message, two reports, on' of their secretary, which is an abstract of their doings, and the other the report of their salesman, which gives information with reference to the lands sold, &c. They find by reference to the report of F. W. Webster, surveyor-general, &c., appended to the senate and assembly journals of the second session of the legislature of said State,
241 begun and held on the 5th day of January, 1869, an estimate of the Internal-Improvement Lands and swamp and overflowed lands belonging to said fund and remaining unsold on the 31 day of December, 1868, as follows: Swamp and overflowed lands, 9,855.720[55] acres; Internal-Improvements Lands, 230,487[37] acres.

Whether these estimates are to be relied on as accurate or not they cannot say; that it is impossible for them to give accurate information in the absence of their co-trustee, the said Webster, who, as hereinbefore stated, had charge of the maps, books, records, and papers connected with the land matter of said fund, nor can satisfactory or reliable information be obtained without examining the books and records and the making of abstracts therefrom, which would require a great deal of time. With reference to all and singular, the other matters enquired of in said interrogatory, these defendants, by what they have hereinbefore stated, have answered the same as fully and completely as they are now able to do.

To the eighth interrogatory these defendants, severally answering,

modify said order or decree, so as to render said reconveyance unnecessary, and that the said New York and Florida Improvement Compony should apply to the court at the present term thereof to modify the aforesaid decree in accordance with the suggestion of the honorable Justice J. P. Bradley; and the defendants would further show that they have acted in good faith and done all in their power to obey the aforesaid decree and ask that they may be purged of contempt of this honorable court, under the aforesaid decreetal order.

J. B. C. DREW,
Sol. for Defendants, Harrison Reed et al., Trustees, etc.

(Indorsed:) U. S. circuit court, north. dist. of Florida. Francis Vose vs. Harrison Reed et al. Showing obedience to Drew. Filed Dec., 1871. J. E. Townsend, cl'k.

248 UNITED STATES OF AMERICA,
Northern District of Florida:

To the judges of the circuit court of the United States for the northern district of Florida.

The petition of Francis Vose, a citizen of the State of New York, respectfully shows:

That, on the 6th day of December, in the year 1870, a writ of injunction was issued by his honor Judge Woods, in the case of your petitioner, complainant, against the trustees of the Internal-Improvement Fund of Florida et al., enjoining and commanding Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, The Trustees of the Internal-Improvement Fund of Florida, and their successors, that they should desist from selling, or donating, or disposing of the land belonging to said trust, otherwise than in strict accordance with the provisions of said act of 1855, which had created the trust, fixing the price, and allowing pre-emptions of the same, in obedience to all the restrictions of that act; that they should desist from selling said land for scrip, or State warrants of any kind, or for aught else than current money of the United States; that they should desist from lending, or investing, appropriating, disposing of, or using, any of the moneys or property of said trust fund, except in applying them to the creation of the sinking fund provided by said act of 1855, and so applying them in strict accordance with the provisions of that act, when said moneys properly belong to said sinking fund, or in payment of the coupons of said bonds, when said moneys have proceeded, or shall proceed, from the sale of said lands; and that they should desist from paying said coupons in any other mode than in the order of their priority, fixed by the date of their coming to maturity, paying first such as first became due, and the others in the order in which they fell due.

And your petitioner further shows that, on the day of , in the year 1871, a petition was presented to his honor Judge Woods, charging the said the trustees, with violations of the said injunction, and praying that a writ of attachment might be issued against them for contempt.

That, on the 18th day of May following, the said the trustees, in response to an order granted upon said petition, appeared before his honor, Justice Bradley, at Jacksonville, Florida, and argument was heard by him upon the original and amended bill and answers thereto, on motion

to dissolve said injunction, and upon the said petition and answers thereto, on motion for a writ of attachment; that his honor refused to dissolve said injunction, and held, among other things, that the said the trustees had violated the said injunction in this: "That, prior to its being granted, The Florida Improvement Company had deposited $10,000 in railroad coupons, in payment for 100,000 acres of land, which Conover, the treasurer, refused to receive. They were not worth more than 10 to 30 cents per dollar. That, since the injunction, Conover was displaced by J. S. Adams, who accepted them at par, and the sale was perfected." And his honor decreed that, by the first day of the next approaching term of this honorable court, the said the
249 trustees should secure a reconveyance by the Florida Improvement Company of the said 100,000 acres of land, or that they should be held guilty of contempt, and dealt with accordingly.

And your petitioner further shows that during the month of June immediately thereafter, the said the trustees proceeded to re-enact the same contempt by selling 23,116.01 acres of land to the Southern Inland Navigation Company, or to W. H. Gleason, for $28,116.01, receiving in payment therefor coupons which had been previously deposited with the said S. B. Conover. And, also, during the same year, did sell other lands for $2,040.43, receiving like payment in coupons.

And your petitioner further shows that, intermediate, the 5th day of April, 1871, and the 6th day of January, 1872, there were sold some 10,000 acres or upwards, of the lands of the Internal-Improvement Fund, partly for cash, and partly for coupons; that the aggregate amount realized by said sales was $8,395.69; that while the whole of these sales were nominally effected by the salesman of the said trustees, the larger part were really effected by Williams and Swann, a firm of land agents and dealers, and, as such (said Swann being publicly), partners of the trustees, or trustee, acting as secretary, salesman, and treasurer of said board, under pretence of a contract between the latter and the said the trustees, by which said pretended contract, the said Williams and Swann were to select land coming to the State, under the act of Congress of September 28, 1850, and to furnish the necessary lists, tract-books and maps, to be paid in land at $1 per acre; that, of the said $8,395.69, the said Williams and Swann thus took in and retained for themselves $4,100; that since the month of July, 1871, the said Williams and Swann have received an aggregate of $10,000, and, under the provisions of said alleged contract, are still to receive $30,000.00 more for their pretended services; that the labor rendered by the said firm under the said pretended contract, is altogether nominal, the said Williams having been already and previously engaged by the Government of the United States to make surveys of the same lands; that the lands so to be selected and mapped by them are now confessedly worthless, and must, of necessity, remain so for many years to come; that, instead of making the compensation of the said land agents a lien, or burden, upon the said lands, so to be selected and mapped by them, the said trustees have been, and now are, recklessly and fraudulently, diverting to their use the proceeds of the sales of other lands, which should be applied to the payment of the coupons held by your petitioner and others. All of which actings and doings of the said trustees, in the sale of said lands for coupons, and in the conveyance and sale of said lands, through and for the benefit of said Williams and Swan, are in direct violation, and in renewed contempt, of the injunctional order of this honorable court.

And your petitioner further shows that, during the said year 1871, the

treasurer of the said board of trustees was authorized to exchange, and did actually exchange, non taxpaying script at par for coupons, to the amount of $15,000; that the said treasurer, upon his recent examination before the master, testified that "he could not tell the class of coupons so received in exchange;" but your petitioner avers that said coupons must have been of junior date to coupons held by himself, it being impossible that coupons to that amount, senior to his own, could have been at that time in circulation; and that this payment by exchange was made without any notice whatsoever to him, or any opportunity given to him to participate in the benefit resulting to the holders of coupons from this action; although your petitioner shows that his claim had been pointedly brought to the attention of the treasurer of said board, as will appear from the following letter:

JACKSONVILLE, *Feb'y 24th*, '71.

J. S. ADAMS, Esq'r.,
Treasurer Trustees of the Internal-Improvement Fund,

DEAR SIR: The amount of coupons due March 1, 1861, on bonds
250 of the Florida Railroad held by me, is $6,825, and the same amount has been falling due since, every six months, without anything having been paid upon them, notwithstanding my protests and notices of May 20th and December 1, 1868, for the purpose of holding the trustees personally liable.

As I am informed that you are now treasurer of the board, I have to request payment of the coupons above mentioned, due March 1, 1861, or of the proportion coming to me from the sales of lands before and since the injunctional order of the 7th December last.

It is, perhaps, proper to repeat in writing what I have often mentioned verbally, "that there are a large number of coupons not cancelled for which payment is claimed, which are not properly outstanding nor chargeable to the fund."

Yours, respectfully,

F. VOSE.

Your petitioner shows that the above was handed to Mr. Adams February 21st. Upon making application, February 25th, for a reply, Mr. Adams stated to him that before making any payment of coupons he would require authority from the board of trustees. And your petitioner avers that said action of said trustees in paying said coupons was secret, fraudulent, designed to create and to give fraudulent preference, and in clear violation of the said injunction.

And your petitioner further shows that, at the close of the year 1866, there remained in the hands of the said trustees from the proceeds of the sale of the said Florida road, a balance of $53,500, which passed into the sinking fund provided for the payment of the bonds of the said railroad company still outstanding; that these were in number two hundred and twenty-five, of which your petitioner is the holder of one hundred and ninety-five; that; had said amount ($53,500.00) been at that time applied, in response to a proposition which was shortly thereafter made, and as, under the said act of 1855, it might have been applied, to investment in the said the outstanding bonds, with the interest accruing upon it, it would have been tantamount now to an accumulation in the said sinking-fund of $78,281.00; that since the month of July, 1868, there has been received from said Florida Railroad Company by the incumbent trustees, in the semi-annual payment of one-half of one per cent., the sum of $8,560.00, or thereabouts. And your petitioner further shows that, had a similar disposition been made of these

amounts, they would also have been tantamount to a like accumulation of $9,587, making an aggregate sum of $87,868. But the said trustees, retaining the said moneys in their own hands, have reduced the said fund to a value not exceeding $35,500; incurring a loss of $52,368, or thereabouts, within the short period of six years. And your petitioner charges that this heavy loss has resulted—

1. From investments at par in State bonds and State scrip, when these securities were far below par.

2. From unauthorized, illegal, and fraudulent exchanges made of tax-paying for non-tax-paying State scrip, the former being worth 100 per cent. more than the latter.

3. From the substitution, by individual members of the board of State scrip for the money actually collected by them from the said Florida Railroad Company, when the said scrip was 50 per cent. below par, retaining the money and turning the scrip into the fund at par.

4. From heavy payments to counsel, who have represented them in their efforts to impede your petitioner in the assertion of his just rights, and who have defended them in their repeated violations of the injunctional orders of this court, said counsel so defending them being at times members of their own board.

And your petitioner further shows that, on the 31st of May, 1871, the said trustees entered into articles of agreement with the Jacksonville, Pensacola, & Mobile Railroad Company, by which they covenanted to convey to the said party of the second part all of the lands of the said Improvement Fund of Florida held by them in trust, with certain exceptions, and in consideration of certain covenants and undertakings; which said articles were signed by Harrison Reed, governor; S. B. Conover, treasurer; James B. C. Drew, attorney-general; and J. S. Adams, commissioner of immigration, etc. And, on the 16th day of December following, by consent of the said trustees, a decree was
251 rendered by his honor, Judge Woods, which established the indebtedness of the said fund to your petitioner; ordered that, within 30 days from its date, the securities and money constituting the said sinking-fund, to be applied to payment of your petitioner's bonds, should be valued, and should be taken by your petitioner at such valuation, in exchange for bonds of the said Florida Railroad Company, and that, semi-annually, within ten days after receipt of the same, the said trustees should, in like manner, invest the said amount of one-half of one per cent. to be paid by said company into said sinking-fund, and ordering further that the said articles of agreement between the said the trustees and the said the Jacksonville, Pensacola & Mobile Railroad Company, be affirmed, made valid and final, upon certain conditions, among them the payment by the said railroad company to your petitioner of his claims, so established as aforesaid, all of which will more fully appear from said decree itself, now of record in this court, to which your petitioner prays to refer as part of this his petition.

And your petitioner further shows that the said the trustees, did wholly fail and refuse to obey those clauses of the said decree which relate to the said, the money and securities constituting the said the sinking fund, although frequently applied to by your petitioner so to do; at times, pretending that the said, the Jacksonville, Pensacola & Mobile Railroad Company, having failed to comply with their part of said contract so as aforesaid confirmed by said decree, they, the said trustees, were wholly relieved from complying with the orders of this court in reference to the disposition of the said the sinking fund;

whereas your petitioner charges that the two subject-matters were wholly distinct, the one from the other, the said, the disposition of the sinking fund, being an arrangement wholly independent of the said articles of agreement to which your petitioner was not originally a party, and which he consented should be embraced in said decree only on condition that his said claim should be paid within a certain time; and which, said disposition of said sinking fund, in view of the fact that your petitioner is the holder of nearly the entire amount of the outstanding bonds to be redeemed by said fund, was eminently wise, just, and equitable, while it was in full accord with the provisions of the act of 1855. And finally, the said trustees, pressed by your petitioner to the performance of their duty under said decree, took refuge in the pretence that they had never in fact consented to its rendition; that the member of the board who signed that consent was without authority to sign it; that the attorney who claimed to represent them was without authority to do so; and that the board itself was without power so to dispose of the lands of said trust; whereas your petitioner charges that all except one of the said trustees had, months prior to the rendition of said decree, solemnly consented, under hand and seal, to exercise the said power, the existence of which they now deny, to the extent of conveying to the said railroad company the entire trust domain, consisting of some seven or eight millions of acres, while under the provisions of said decree, the amount to be conveyed was but little over some two millions of acres, for the same consideration in money; and for the lands to be conveyed under said decree they would have received, as appears by the report of the commissioner of lands and immigration, about seventy-five cents per acre, while in the other conveyances already made and contracted for, no payment whatever is required, or not exceeding five or ten cents per acre. And the said, the trustees, instead of obeying the said decree, have actually placed on the records of this court, a motion to vacate the same.

Your petitioner shows that all of these actings, failings, and refusals of the said the trustees, are not only oppressive to him, but are in violation and in open contempt of the authority and mandates of this honorable court; and that, so far from having been stayed by the injunctional orders hitherto granted, the work of reckless and fraudulent waste goes on, both in the moneys and securities of the sinking fund, and in the sale of the lands, and the disposition of the proceeds resulting therefrom.

252 And your petitioner further submits that it has been made to appear from the testimony already taken by the said master, and from the public reports of the said board of trustees and its officers, that its business is conducted in the loosest manner; that, while the public report of the commissioner of immigration to the governor, for the last fiscal year, would show a balance unaccounted for of receipts over expenditures of some $11,000.00, which must now have been increased to some $20,000.00, no books can be referred to for the purpose of investigating how that balance has accrued, the said officer having himself testified before the said master, that "there is no book kept by the board, showing the receipts and expenditures;" and the said Simon B. Conover, one of said trustees, having also testified as follows: "The book of record of proceedings of the board is kept by Mr. Adams, but in what place, or where he keeps it, I do not know. But I do know that, under a resolution of the board he is required to keep it in Tallahassee. There has been several occasions when members of the board have desired to have access to the books, but could not find them, Mr.

Adams being absent from Tallahassee. He keeps an office of collector of customs of the United States, and as commissioner of immigration of Florida, in Jacksonville, and spends but little of his time in Tallahassee. When I was treasurer I made an annual report as such to the board. I am not aware that the present treasurer has made any report to the board."

And your petitioner respectfully submits that, while there is thus no check whatever upon the actual waste committed by said trustees, there are no sufficient records kept to trace it satisfactorily hereafter, and to fix personal responsibility therefor.

And your petitioner further shows that he has just heard, and does verily believe, that they, the said trustees, have received, and either have given, or probably will give a favorable hearing to a proposition from the Florida Improvement Company, to convey to the latter land warrants to the amount of 250,000 acres, in payment of $125,000, alleged by said company to have been expended under the agreement between itself and the said trustees, the execution of which was enjoined by his honor, Judge Woods. And your petitioner submits that such action would be in clear violation and evasion of said injunctional order.

And your petitioner further shows that, in prostituting the fund and its management to their own personal benefit and speculations, in contracting to convey the lands to corporations, without capital or credit, and for considerations so vague and indefinite as to be mere shams, in withdrawing these lands from sale and refusing to sell those remaining at market prices, the litigation and trespassing are greatly increased, and the bona fide sales and settlement are almost entirely suspended.

Whereupon your petitioner prays that an order may be issued, directed to the said Harrison Reed, Robert H. Gamble, Frank W. Webster, Simon B. Conover, and John S. Adams, the Trustees of the Internal-Improvement Fund of Florida, and to J. B. C. Drew, and any others, their successors, commanding them and each of them to appear upon some day, and at some place, to be designated by your honors, and show cause, if any they have, why the penalty set out in said writ of injunction should not be inflicted upon them, and every of them for and on account of their various acts in contempt of the same.

And why an attachment for contempt should not be issued against them for having failed and refused to obey the said decree rendered against them by his honor Judge Woods, as aforesaid.

And why a fit and proper person should not be appointed as speedily as possible, receiver, to take charge of the said moneys and securities constituting said sinking fund, and to demand and receive from the said trustees all moneys and securities now in their hands, or which may come into their hands, either by payments into said sinking fund, or by sales of said lands, to hold the same under the direction, and subject to the future order of this honorable court.

JACKSON, LAWTON & BASINGER,
Solicitors for Pl'ff.

253 In the circuit court of the United States for the northern district of Florida.

On reading and filing the foregoing petition, it is ordered that Harrison Reed and others, The Trustees of the Internal-Improvement Fund of Florida, named in said petition, and their successors, shew cause before me at the United States court room in Jacksonville, on the 29th

day of April, A. D. 1872, at 10 o'clock, why the prayer of said petitioner should not be granted. And that a copy of this petition and order should be served upon them personally, or upon their solicitors, at least three days before the said 29th day of April appointed for said hearing.

April 22d, 1872.

(Signed) PHILIP FRAYSER, *Judge.*

254 (Indorsed:) In the circuit court of the United States for the northern district of Florida. In equity. Frances Vose v. The Trustees of the Internal-Improvement Fund of Florida et. al. Petition. Copy. Original filed 22d April A. D. 1872. Jackson, Lawton & Basinger, solicitors for pl't'f.

255 United States circuit court northern district of Forida.

In the matter of the petition of Francis Vose for attachment for contempt, et cetera.

FRANCIS VOSE, PLAINTIFF,
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal-Improvement Fund of Florida, defendants.

And now comes one of the above-named defendants and makes this his separate answer to the aforesaid petition and respectfully shows to this honorable court that he was attorney-general of the State of Florida and one of the Trustees of the Internal Improvement Fund of the State of Florida from the 26th day of January, A. D. 1871, to the 12th day of February, A. D. 1872, and is not now one of the trustees of the aforesaid fund; that for answer to so much of the petition of the complainant herein, alleging a violation of the injunctional order hithertofore made by his honor Judge Wood, in the matter of
256 selling 23,116 and .01 acres of land to the Southern Inland Navigation Company for $28,116.01, receiving in payment therefor coupons which had been previously deposited with S. B. Conover, state treasurer, says that before signing the said conveyance he was informed by the treasurer of the fund, S. B. Conover, and by the salesman of the board, J. S. Adams; that the said coupons had deen deposited by Mr. Gleason, the agent of the said company, with the said Conover, as treasurer of the said board, and received by him in payment for the said lands, a long time prior to the issue of the said injunctional order and before he became one the trustees, which he verily believes to be the fact, and he signed the aforesaid conveyance, believing that the said trustees were bound to execute the said conveyance, since the purchase-money had been paid and received by the treasurer of the trustees, not having any intention to violate the injunctional order, the circumstances being different than in the case of the conveyance to the Florida Improvement Company, in this, that the said Conover, treasurer, refused to receive the $10,000 in railroad coupons, whereas in the case of the conveyance to the Southern Inland Navigation Company the said treasurer
257 did actually receive and receipt for the said coupons in payment for the said lands. That in answer to so much of the complainant's petition touching the contract between the trustees and Williams and Swann for the selection of lands under the act of Congress of Sep-

tember 28th, 1850, said services to be paid for in land at $1.00 per acre, says that he gave his assent to that contract, believing it to be advancing the interests of the fund, bringing to it a large tract of land with the advantage of the first selection. The said Williams and Swarm, taking their pay in lands, he regarded it as a good contract for the trustees, and he supposed and understood that that would be their only mode of payment, and the first knowledge that he ever received that they were paid in any different manner was after he had ceased to be a trustee of the said fund; that during the time he was trustee, J. S. Adams was treasurer and salesman of the board, whose duty it was to receive money in payment for lands sold, and your respondent signed conveyances from time to time as they were brought to him upon the supposition that nothing but cash had been received in payment,
258 and never to his knowledge signed any conveyance as trustee where payment had been made in any other way, excepting the aforesaid conveyance to the Southern Inland Navigation Company.

Your respondent further says that no investment of the trust fund was made in State bonds or State scrip while he was a trustee; that he never, directly or indirectly, exchanged tax-paying for non-tax-paying scrip belonging to the trust fund; that during his term as trustee he never received or exchanged a single dollar belonging to the said fund, except moneys paid him for actual expenses incurred in the performance of his duties as trustee upon regularly audited accounts, neither has any such exchange of State scrip or the substitution of State scrip for money collected from the Florida Railroad Company been made with his knowledge and consent. In answer to so much of the complainant's petition, charging a contempt of a certain decree made by his honor Judge Woods, at Savannah, Ga., purporting to be consented to upon the part of the trustees, your respondent says that the said decree was rendered without their knowledge and consent, and no person or attorney ever received any authority whatsoever to
259 sign said decree on behalf of said trustees; that on the contrary your respondent, learning indirectly before said decree was entered, that the same was to be entered without the consent of the trustees, being in the city of Tallahassee, prepared and forwarded by mail to the Hon. Phillip Fraser, judge of the United States district court, then presiding at a term of the United States circuit court, then being held in the city of Jacksonville, in which court this cause was then pending, the following protest, a copy of which is herewith given and reads as follows, to wit:

TALLAHASSEE, FLA., *Dec. 14th*, 1871.

I wish to protest, as a member of the board of Trustees of the Internal Improvement Fund Fla., and as their attorney and solicitor of record, in the case of Francis Vose vs. Harrison Reed et al., in the circuit court of the United States for the northern district of Fla., against any consent decree being entered in that case without the authority of said board and myself, as their solicitor of record.

(Signed) JAMES B. C. DREW,
Attorney-General, Florida.

To Hon. PHILLIPI FRASER,
Judge U. S. Dist. Court, Jacksonville, Fla.

260 Under this state of facts the trustees refused to carry into effect the said decree, and, on the contrary, directed their solici-

tor to cause the same to be set aside, and a motion to that effect was made by your respondent in this court, pending the consideration of which your respondent ceased to be a trustee and solicitor for said trustees. And your respondent, for answer to that portion of the complainant's petition, alleging the "exchange of tax-paying scrip at par for coupons to the amount of $15,000," denies having any knowledge of such transaction until reading the complainant's petition, and if any such exchange was made, it was made without this knowledge or consent. Immediately after reading the petition he examined the record of meetings of the trustees and found a resolution authorizing the treasurer, Mr. Adams, to make the aforesaid exchange of scrip for coupons to the amount of $15,000. This resolution was recorded, among the other doings of said trustees, at a meeting held in the city of Jacksonville, in the month of , A. D. 1871, at which meeting your respondent was present, although your respondent distinctly recol-
261 lects all the transactions of the said trustees at the said meeting, he denies any knowledge of any such resolution being either offered or acted upon while he was present at said meeting, and the only way that he can account for a record of such resolution is that it is possible that the same may have been adopted while he was absent from the room, as he was not present all the time during the said meeting, or an error in the record of the proceedings itself.

Your respondent further says that while a trustee he endeavored at all times to act in strict conformity to the said injunctional order, and prays that he may be discharged from all further proceedings in the matter of the petition for attachment for contempt, etc.

Dated April 27th, 1872.

JAMES B. C. DREW.

STATE OF FLORIDA:

James B. C. Drew, being duly sworn, says that the matters and thought set forth in the foregoing answer are true in substance and fact, except as to matters therein stated upon information
262 and belief, and as to these matters he believes it to be true.

J. B. C. DREW.

Subscribed and sworn to before me this 27th day of April, 1872.

J. E. TOWNSEND, *Cl'k.*

263 (Indorsed:) United States circuit court. Francis Vose ag't Harrison Reed et al. Application for attachment for contempt. Filed April 29th, 1872. J. E. Townsend, cl'k. Answer of J. B. C. Drew.

264 *Answer of J. S. Adams to the application of complain't for attachment.—Filed April 29th, 1872.—J. E. Townsend, cl'k.*

In the U. S. circuit court, 5th judicial circuit, northern district of Fla.

FRANCIS VOSE,
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEment Fund et al.

This defendant, answering, says:

In response to the general tenor of the allegations, wrestfulness, and recklessness against the defendants in the petition of the complainant.

That the great body of the claims against the internal improvement fund, of which the defendant and his colleagues are officially the legal custodians, consists of bonds of the different railroads, which are beneficiaries of the act constituting the fund and creating the trustees, for the ultimate redemption of which bonds the trustees are bound to establish & maintain*ance* sinking fund, and the coupons of which bonds are guaranteed payment in lands, or the proceeds of the sales thereof.

That the action of the trustees in the management of the funds, within the last few years, has been such as very largely to increase the value of the coupons and bonds of said roads, & of the security for their payment derived from the fund.

In the year 1866, for non-payment of its tax for the sinking fund, the Florida railroad was seized and sold by the trustees, agreeably to the provisions of the internal improvement act of 1855, & the same course was subsequently taken with the Florida, Atlantic & Gulf Cen-
265 tral R. Road in 1868, and with the Pensacola & Georgia, and the Tallahassee R. Roads in 1869.

The Florida R. road was sold in 1866 for an amount equal to 20 per cent. of the total amount of its bonds issued and guaranteed by the fund; and the whole of said amount was deposited with Moses Taylor of New York, a prominent banker there, for the purpose of taking up the outstanding bonds of that road at that rate.

Nearly all the bondholders of that road gladly availed themselves of the opportunity, &, accepting the 20 per cent., surrendered their bonds. The complainant in this case, at that time, refused to accept the conditions of proffered judgment, and brought suit in New York against the trustees, alleging gross wret'fulness, and carelessness, & fraud on the part of the trustees, and asking the appointment of a receiver, and said suit, precisely similar in its character, in its allegations, & scope is still pending & undecided in the courts of New York, having been litigated in the defence of the fund at great expense.

The Florida, Atlantic and Gulf Central Railroad was, for similar cause, sold in 1868, and also brought 20 cents on the dollar of its liabilities, & with this amount so received from the sale of the road, all of its bonds, except $36,000 of bonds, have been paid up & surrendered.
266 In 1869, the Pensacola & Georgia, & the Tallahassee R. Roads, for default in payment of their sinking-fund tax, were taken possession of & sold by the trustees for enough to take up all the bonds of the P. & G. R. R., and about 94 per cent. of the bonds of the Tallahassee R. road, of the amount for which these roads were sold, bonds to the amount of $960,000, with their coupons attached, to a great amount have been paid in, & the bonds & coupons thus received & cancelled exceed $2,000,000 in amount; while there still exists a balance of the purchase money of said roads unpaid of some $462,000, with interest, for which suit has been brought, & for the payment of which the J., P. & M. R. road has been, by order of the State court, seized & placed in the hands of a receiver.

From all which, as this defendant alleges, it will be apparent, that with the exception of the claimant in this case, who refused to accept terms, readily acquiesced in by other creditors, the claims of all other creditors have been almost actively satisfied, or satisfactory arrangement for their payment has been made, so that the fund, in its entirely, consisting of several millions of acres of land, gives ample security for the ultimate redemption of the bonds held by Mr. Vose, & for
267 the payment of his coupons, and therefore, that the allegations in said complainant's petition made, that the security of com-

plainant's claim is endangered by the careless mismanagement & fraud of the trustees is not well sounded.

And this defendant further says, that the trustees have always recoggnized the claim of Mr. Vose, and that said trustees, while having neither the ability nor the inclination to make his a preferred claim, or to extend special terms to him in contradistinction to other creditors, have still urged upon Mr. Vose the acceptance of the terms offered to other creditors, and have, from time to time, made repeated efforts to settle his claim with such means as were within their control.

That in 1868 Mr. Vose desired that the trustees would makes the coupons held by him receivable for lands, & then make his coupons more marketable, and that, in fact, about that time, before this defendant was made a member of the board of trustees, said complainant made and executed with this defendant a contract in writing, by which, in case his coupons could be made receivable for lands, he agreed to intrust his coupons to this defendant & his then pending *for sale* upon terms then agreed upon & in said contract specified.

That in January, 1870, complainant, by his attorney, D. S.
268 Walker, appeared before the trustees and urged the payment of Mr. Vose's claim, whereupon the trustees then agreed to receive the coupons of Mr. Vose for land under certain conditions. But the conditions were not accepted by the complainant, and the negotiation failed.

But in June, 1870, in consideration of the large amount of claims against the fund which had been satisfied, & the thus assured sufficiency of the fund to satisfy all legitimate claims against it; and incited also began earnest disposition to settle and pay the claim of the complainant. The trustees, with sufficient guards against imposition, did make the coupons of R. R. bonds guaranteed by the fund receivable for lands, but as will appear from the petition of the complainant, this action of the trustees, though taken in accordance with the wishes of complainant, is *yet* made the basis of virulant denunciation of the trustees.

And this defendant further says that, influenced by a sincere desire to settle the demand of the complainant, and to save the useless expense to the fund caused by an unnecessary litigation of a claim which they did not dispute, the trustees have instituted conference after conference & repeated negotiations with the complainant & his
269 attornies, until such repeated negotiations terminated in the final decree by consent, signed by Judge Woods in December, 1871.

And that since the failure of compliance with said decree, in consequence of the default of other parties, and on the 8th March, 1872, the trustees, by resolution of that date, proffered to Mr. Vose, in settlement of his claim, to invest in complainant's bonds the sinking fund on hand to the amount of $50,000, and the pro rata share of the sinking fund of the Florida R. road pertaining to complainant's bonds, as said fund may accrue, and to give him 600,000 acres of land in land stouts or certificates for complainant's coupons, thus making a most liberal offer, which complainant declined.

And this defendant further states in reference to the alleged insecurity of the claim of the complainant:

That since the accession of the present trustees, the market price of bonds, coupons, & other claims against the fund has steadily increased.

At the time of the sale of the Florida R. road, in 1866, at 20 per cent. of its liabilities, the coupons of that road were easily purchased in the

market at ten cents on the dollar, but that after the sales of the various roads, hereinbefore referred to, and the liquidation of claims
270 against the fund thereby caused, the value & market price of bonds and coupons of said roads has steadily advanced, and the effect of the policy of the trustees in the management of the fund has been such that notwithstanding the allegations in the petition of the complainant, impugning the good faith and business sagacity of the trustees, the fact stands out in the knowledge of all men cognizant of r'road affairs in Florida that the bonds & coupons of the various roads referred to, including those of Mr. Vose, the complainant, from the calling in & payment of more than 60 per cent. of all legitimate claims against the fund, resulting from the management of the trustees, have so largely increased in value that the coupons of Mr. Vose, which, in 1865 and '6 could not have been sold in market at ten cents on the dollar, are now held at from 40 to 60 cents on the dollar, and this in spite of the immense expense caused by the pendency of suits against the trustees in Mr. Vose's name, both in New York & in Florida, for the same cause of action & at the same time.

And this defendant, in regard to the specific allegation in said complainant's petition for an attachment, last filed in this hon. court, further answering, says:

271 That in obedience to the decretal order of this hon. court, made in May, 1871, and renewed in December, 1871, directing a reconveyance to the trustees of the lands theretofore conveyed to the Florida Improvement Company, and to E. A. Studwell, the direction of this hon. court has been fully obeyed, and the deeds of reconveyance from said Fl'a Imp. Co., and same Studwell, has been fully executed and filed in this court, pursuant to its order, and that all of said lands have, by resolution of the trustees, been restored to market, and that, so far as this defendant knows, no design has existed on the part of any of the trustees to make any other disposition of said lands than in strict accordance with the order of court herein, & with the consent of the complainant.

And in reference to the second allegation in said last petition of sales of land to W. H. Gleason, in violation of the injunction, this defendant states that long previous to the issue of injunction in this case, viz, in April, 1870, in accordance with a contract theretofore made with the Southern Inland Navigation & Improvement Company, a concession was made of lands to said company on their payment of the stipulated price, and on their filing of a bond in said concession prescribed, & its approval by the trustees deeds were ordered to issue.

272 That payment for said lands had already, at that time, been deposited with the treasurer of the board, and that the form of the required bond was filed with and approved by the board in the month of September, 1870, & thus the whole contract consummated some three months prior to the issuing of the injunction, and that no deeds, other than in furtherance of such completed contract, have, to the knowledge of this defendant, issued.

And, in regard to the sale of land for coupons, no such sale has occurred except where the proceeds of sale, in strict accordance with the injunction, have been invested in coupons of equal or prior date to those of the complainant. And in response to the 3rd allegation, of a "pretended contract" with Messrs. Swann & Williams, this defendant states that a contract for the selection of swamp & overflowed lands, agreeably to the laws of the United States, was presented to the trustees for consideration by Messrs. Swann & Williams, of Fer-

nandina, men of known character for competen e and integrity, on the 4th February, 1871; that said contract was, by the trustees, approved & refer'ed to the governor to complete, as by law & custom, the appt. of agents for selection devolved upon the governor. This contract
273 was fully considered unanimously approved by the trustees, also approved by the governor and returned to the trustees to be recorded on 4th March, 1871, & was then recorded & published in the an. report of the trustees in Jan'y, 1872.

By said contract, for every acre selected, Messrs. Swann & Williams, on return of the plot and lists, were to receive two cents, payable in land at one dollar per acre, and as in the case of competent & upright agents approval of selections follows selection, as a matter of course, the selection of such men was deemed equivalent to an addition to the fund of so much land as might be selected, which at the established price would be held at $1.25 per acre, & and the so-called "pretended contract" was deemed a reasonable and desirable one.

And this defendant further states that, so far as his knowledge extends, neither this defendant nor any other of the trustees has or ever had any the slightest interest whatever in said contract.

In reference to the 4th allegation of the complainant, this defendant states that it is true that the treasurer of the fund was, during the year 1871, as had often been done before, authorized to exchange State scrip for R. coupons of similar character to those of the complainant,
274 and did do so to the amount of $15,000, thus & to that extent diminishing the indebtedness of the fund, and to the same extent relieving the trustees from the burden of the allegation of having accepted State scrip instead of R. R. coupons in payment for land.

And in reference to this allegation this defendant further states that in 1871 non-tax-paying State scrip was selling at from 30 to 33 cents on the dollar, while the policy of the trustees had advanced the market price of coupons from about ten cents in 1866 & '7 to from 30 to 40 cents, and that thus the exchange of scrip for coupons was in fact an exchange of equivalents.

In reference to the fifth allegation of complainant, that the sinking fund might have been invested more profitably, the defendant states that the trustees have made repeated efforts to recal' the balance in Taylor's hands in New York, which this complainant refused to accept in payment of his bonds upon terms readily accepted by other bondholders, and which, then received, at compound interest, would have insured the payment of his bonds at their maturity, but have been foiled in every effort to recal' said balance, & in order to invest the same according to law, and this mainly by the interposition of the law-
275 suit brought by complainant in New York.

That the heavy payments to counsel have been incurred in defending the sinking fund, which by law is appropriated to the payment specifically of the principal of the bonds of said road against the demand of complainant that the same should be expended in the payment of coupons for interest, as the trustees have supposed in violation of law and against right.

And of any substitution by indi*vidend* trustee of money received from Florida R. R. for scrip, this defendant has no knowledge, and believes that any investments of the assets of the fund in U. S. bonds or State bonds & liabilities, or in R. road bonds guaranteed by the fund, if any such has been made, is precisely permitted by the internal-improvement act.

In regard to the non-obedience to the decree of December, 1871, of his

honor Judge Woods, this defendant states that he was personally informed, on application to the clerk of this hon. court, that the decree, by order of court, had been prohibited from entry on the docket, as being informal, of no effect.

As to the seventh allegation of the said complainant, this defendant states that the system of keeping the land-books in the State land
276 office is such that a complete history of any transaction in the sale of land is completed, describing the tract sold in full, giving the quantity, the kind, the description, the appraised value, and the nature of the payment, & then at a glance the complete transactions of the office are displayed.

That while it is true that the regular treasurer's book of the treasurer of the board preceding the present has never come into the hands of the present trustees, and thus there is no regular treasurer's book belonging to the board as such, yet such treasurer is required to make, & does make, a complete record of all expenditures of the funds of the trustees coming into his hands, which is periodically examined and apprised, or disapproved & corrected. That this defendant, while treasurer, has kept and returned his accounts, & retained the same when settled & approved as voucher, & that, as far as he knows, his predecessor took the same course. Of late the treasurer of the trustees has been required to give satisfactory bond in $20,000. In regard to the 8th allegation of the complainant, that the trustees are about to give a favorable hearing to a proposition from the Florida Improvement Company to receive 250,000 acres of land for $125,000, this de-
277 fendant will not undertake to answer as to the probable future action of the trustees any further than to say that if the allegation be well founded, it would only show a disposition on the part of the trustees to offer to another claimant precisely the same terms which have been repeatedly tendered to the complainant.

278 And this defendant further says that he personally and his co-defendants, the trustees, he believes, have not intended, wished, or desired, nor have he or they violated the decretal order of this honorable court, or any mandate or injunction thereof, but upon the contrary that this defendants, & he believes the other trustees, have used their best efforts and judgement to obey the honorable court, and now and at all times are anxious and desirous so to do, and further, that as before shown, this defendant & his cotrustees he believes have no personal interest or benefit in any of the matters set up by complainant; that they have official duties to perform, and nothing else actuates this defendant and he believes his codefendants, but an anxious desire to discharge faithfully the official duties connected with the trust and the laws of the State, and that the fund was then created for the sole benefit of complainant; but that the action of complainant has been vexacious & litigious, and of great injury to the fund, as shown above, and this defendant shows to the court that the complainant ought not to be permitted to carry out & litigate two suits, one in this court and one in New York, about the same subject-matter, and to the damage and in-
279 jury to the fund by increased expense & costs and this defendant asks the court that time may be given to the trustees to produce the record of the suit now pending in New York against the trustees, instituted by the said Francis Vose to prove the allegation of the multiplicity of suits. And, further, this defendant shows to the court that the trustees have, as above shown, vastly increased the value of the fund & the securities in the hands of the said Vose, and that the United States have, in market under the homestead law, a vast area of arable

compensation as no more than reasonable, & that the mode of payment adopted was better for the fund than two cents per acre in currency at twenty per cent. discount.

And these defendants further say that the law organizing the bureau of immigration, & providing for a commissioner, provides that the commissioner may act as joint attorney for both vendor & vendee when they may so elect, of lands within the State. (Laws 1869, page 6, sec. 6) & that said Adams did accept an agency in connection with Samuel A. Swain, for the sale of certain lands belonging to the Florida Railroad Co. & its bondholders. But this, or any other agency, had no connection with the contract with Swan & Williams for the selection of lands, and the selection of these two gentleman for such selection of lands was made in reference to their well-earned & well-known & deserved probaty and integrity. And these defendants deny that any arrangement has been made or contemplated with the Florida Improvement Company to give it land warrants for 250,000 acres of land, as set forth in said petition.

286 And these defendants deny that there has been any extravagance or wasteful fees paid to attorneys to defend their wrongful acts or for any purpose whatever. But that in the employment of counsel this board have had reference solely to the protection of the fund & the security of its application alike to all the contemplated objects of its creation.

And these defendants deny that it appears from the evidence taken that the business of the board has been conducted in the loosest manner, or that it will appear that since the present incumberants have had charge that the detail of its affairs are not as susceptible of explanation from its board *or* would be found in the history of other trusts of like character.

And these defendants positively deny that there has been any prostitution of the funds, or that there has any contracts or arrangements made but such as they supposed were in keeping with the spirits & object of the act creating them, & in carrying out the object of the grant the United States & the intentions of the people of the State as expressed in the act of 1855 & the amendatory acts thereto.

287 That about the time of the accession of the present board of trustees nearly all the available cash assets of the fund consisted of a deposit of nearly thirty thousand dollars in hands of Moses Taylor in the city of New York, and that one of the first acts of the board was to send defendant' counsel to New York to demand this portion of the fund to be used in taking up the bonds of which the complainant's claim forms a part. This was refused by said Taylor, & about the same time complainants commenced the suits refer'ed to in said Adams' answer, & the diminution of the fund complained of in petition is mainly caused by the reduction of that fund by the order of that court & by the necessary expenses for counsel & other expenses in that & other suits instituted by complainant, & that not parts of that fund can ever come to the hands of the trustees. That any instruments that have been made by the board in State securities has been fully warranted by the spirit & intention of the act of 1855, as these defendants confidently supposed. That since the time of the order to

288 show cause it has been utterly impossible, owing to the confusion & uncertainty as to who was the board, to *confess* & arrange an answer as full & complete as might otherwise have been proposed, but

that the matters complained of & not *having* fully answered will be found in the published report appended to the answer of said Adams.

HARRISON REED.
J. S. ADAMS.

289 STATE OF FLORIDA,
County of Duval, ss:

In the northern district of Florida.

Harrison Reed, one of the defendants named in the above answer, being duly sworn, says he has heard the above & foregoing answers read and knows the contents thereof, & that the same is true, except as to those matters therein stated to be on information & belief, and as to those matters he believes it to be true; that said Gamble & Conover are not here to swear to the same, but that this defendant, up to the 10th day of July last, has been generally cognizant of the history of the transactions of the board, & can as well state what has been stated as thereof could do.

HARRISON REED.

Sworn to before me this 10th day of May, 1872.
J. E. TOWNSEND, *Clk.*

290 Northern district of Florida.

STATE OF FLORIDA,
County of Duval, ss:

John S. Adams, one of the defendants in above-entitled cause, being duly sworn, says that he has heard read the above & foregoing answer to the petition filed in said cause, & that he knows the contents thereof, & that the same is true of his knowledge except as to these matters therein stated to be upon information & belief, & as to these matters he believes it to be true. That defendants Conover & Gamble are at Tallahassee, & could not be here in time to sign & swear to said answer; but that this defendant is better acquainted with the facts & circumstances than said defendants, he being the secretary of the board, and familiar with the lands & transactions.

J. S. ADAMS.

Sworn to before me this 10th day of May, A. D. 1872.
J. E. TOWNSEND, *Clk.*

(Indorsed:) United States circuit court, northern dist. of Florida. Francis Vose, complainant, vs. Harrison Reed et al., trustees, &c. Answer of Harrison Reed & John S. Adams. Filed May 10th, 1872. J. E. Townsend, cl'k.

291 Know all men by these presents, that we, Aristides Doggett, Holsted H. Hoeg, S. Fobes Doggett, & W. M. Bostwick, of the county of Duval and State of Florida, are held and firmly bound unto the Trustees of the Internal-Improvement Fund of the State of Florida, in the sum of ten thousand dollars, lawful money of the United States, to be paid to the said trustees and their successors in office; for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated the 3rd day of June, A. D. 1872. Whereas the above bounden Aris-

tides Doggett, by decree of the circuit court of the United States for the northern district of Florida, rendered in open court, on the first day of June, A. D. 1872, at the city of Jacksonville, was appointed receiver of all moneys and securities belonging to said trust fund in the hands of said trustees, or of any other person or persons whomsoever, to demand and receive the same, and to sue for and recover the same, and also to demand and receive from said trustees from time to time any moneys that may come into the hands of said trustees belonging to said fund, and to demand for and recover from any and all persons having in their hands or control any of said trust fund, or any
292 property belonging to said fund or who have misapplied said fund, or converted any part thereof to their own use, and to discharge all other duties required of him under and by virtue of said decree, reference being thereunto had will more fully appear.

Now, therefore, the condition of this obligation is such, that if the said Aristides Doggett shall well and truly discharge the aforesaid duties devolving upon him as such receiver under the said decree of court, and obey and carry out such further orders and instructions as may be given him by said court or a judge thereof, then this obligation to be void, else to remain in full force and virtue.

ARISTIDES DOGGETT. [SEAL.]
H. H. HOEG. [SEAL.]
S. FOBES DOGGETT. [SEAL.]
W. M. BOSTWICK. [SEAL.]

Signed & sealed in presence of—
I. H. HADDOCK.
CHARLES CANON.
ED. W. DENNY.

Approved.

PHILIP FRAZER, *Judge.*

293 (Indorsed:) In cir. court U. S. northern district of Florida. F. Vose vs. Trustees Internal-Improvement Fund et al. Bond. A. Doggett, receiver. Filed June 3rd, 1872. J. E. Townsend.

294 In the United States circuit court, northern district of Florida, 5th judicial district.

The President of the United States to the marshal of the United States for the northern district of Florida, greeting:

You are hereby commanded forthwith to arrest Simon B. Conover wherever he may be found, and him safely keep, so that you have his body before the judge of the circuit court of the United States for the fifth judicial circuit and northern district of Florida, on the first Monday of December next, to answer to a charge of contempt in violating the order and injunction of said court, made by said court on the sixth day of December, A. D. 1870, in a certain cause in chancery pending before this court, in which Francis Vose is complainant and Harrison Reed, Simon B. Conover, Robert H. Gamble, Frank W. Webster, and John S. Adams, Trustees of the Internal-Improvement Fund of the State of Florida, et al. are defendants. Herein fail not.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal thereof at the city of Jacksonville, in said district this 1st day of June, A. D. 1871.

[SEAL.] J. E. TOWNSEND, *Clk.*

295 (Indorsed:) In the United States cir. c't, 5th judicial circuit, north. dist. of Florida. The United States vs. Simon B. Conover. Attachment for contempt issued June 1st, 1872. Returnable first Monday in December next. Returned & filed June 7, 1872. J. E. Townsend, cl'k.

Executed the within warrant of attachment by arresting Simon B. Conover at Philadelphia, in the State of Pennsylvania, on the 6th day of June, A. D. 1872.

S. CONANT,
U. S. Marshal.

Service $2.00; bond .50; expenses 123.50—$126.00.

296 UNITED STATES OF AMERICA,
Northern Dist. Florida:

Know all men by these presents that we, Simon B. Conover and John W. Howell and Philip Walter and John A. Henderson, are held and firmly bound unto Sherman Conant, marshal of the United States for the northern dist. of Florida, and to his successors in office, in the sum of five thousand dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, & assigns firmly, jointly, and severally by these presents, signed with our hands and sealed with our seals this the 21st day of June, A. D. 1872.

The condition of the foregoing obligation is such that if the above bounden Simon B. Conover shall be and appear before the judges of the circuit court of the United States for the fifth circuit and northern dist. of Florida, at a court to be holden in the city of Jacksonville, within the northern dist. of Florida, on the 1st Monday of December, A. D. 1872, and shall answer unto the said court, touching a certain charge of contempt, pending against him for having violated and disobeyed the injunction of the said court in a certain cause therein pending in which Francis Vose is plaintiff and Harrison Reed et al.
297 are defendants, and shall abide the order of the said court, and not depart therein without leave of the said court, then this obligation shall be null and void; otherwise to remain in full force, virtue, and effect.

SIMON B. CONOVER. [SEAL.]
J. W. HOWELL. [SEAL.]
PHILIP WALTER. [SEAL.]
JOHN A. HENDERSON. [SEAL.]

John W. Howell, being duly sworn, makes oath that he is worth the sum of four thousand over and above all his liabilities, debts, and exemptions.

J. W. HOWELL.

Sworn and subscribed to before me this 21st day of June, A. D. 1872.
J. E. TOWNSEND, *Clk.*

Philip Walter, being duly sworn, makes oath that he is worth the sum of two thousand dollars over and above all his debts, liabilities, and exemptions.

PHILIP WALTER.

Sworn & subscribed to before me this the 21st day of June, 1872.
J. E. TOWNSEND, *Clk.*

John A. Henderson, being duly sworn, makes oath that he is worth four thousand dollars over and above all his debts, liabilities, and exemptions.

JOHN A. HENDERSON.

298 Sworn and subscribed to before me this the 21st June, 1872.
J. E. TOWNSEND, *Clk.*

(Indorsed:) Bond. Francis Vose, complainant, vs. Harrison Reed et al., trustees et al., defendants. Bond of Simon B. Conover. Filed June 25th, 1872. J. E. Townsend, cl'k.

299 UNITED STATES OF AMERICA,
Northern Dist. of Florida:

Know all men by these present, that we Robert H. Gamble and William Boxram, and John McDougall, and B. C. Lewis, and , are held and firmly bound unto Sherman Conant, marshal of the United States for the northern district of Florida, and to his successors in office, in the sum of five thousand dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assignees jointly and severally *formerly* by these presents. Signed with our hands and sealed with our seals this the day of , A. D., 1872.

The condition of the foregoing obligation is such that if the above bounden Robert H. Gamble shall be and appear before the judges of the circuit court of the United States for the fifth circuit and northern dist. of Florida, at a court to be holden in the city of Jacksonville, within the northern dist. of Florida on the 1st Monday of December, A. D. 1872, and shall answer unto the said court touching a certain charge of contempt pending against him for having violated and
300 disobeyed the injunction of the said court in a certain cause therein pending, in which Francis Vose is plaintiff, and Harrison Reed et al., are defendants, and shall abide the order of the said court, and not depart therein without leave of the said court, then this obligation shall be null and void; otherwise to remain in full force, virtue, and effect.

R. H. GAMBLE. [SEAL.]
W. D. BLOXHAM. [SEAL.]
JOHN McDOUGALL. [SEAL.]
B. C. LEWIS. [SEAL.]

Signed and sealed in my presence this 26th day of June, A. D. 1872.
GEO. LEWIN, *Notary Public.*

W. D. Bloxham being duly sworn makes oath that he is worth the sum of five thousand dollars over and above all his debt', liabilities, and exemptions.

W. D. BLOXHAM.

Sworn to and subscribed before me this 26th day of June, A. D. 1872.
GEO. LEWIN, *Not. Pub.*

John McDougall being duly sworn makes oath that he is worth the sum of five thousand dollars over and above all his debts, liabilities, and exemptions.

JOHN McDOUGALL.

Sworn to and subscribed before me this 26th day of June, A. D. 1872.
GEO. LEWIN, *Not. Public.*

301 B. C. Lewis being duly sworn makes oath that he is worth the sum of five thousand dollars over and all his debts, liabilities, and exemptions.

B. C. LEWIS.

Sworn to and subscribed before me this 26th day of June, A. D. 1872.
GEO. LEWIN, *Notary Public.*

(Indorsed:) Francis Vose, complainant, vs. Harrison Reed, trustees et al., respondents. Bond of R. H. Gamble. Filed July 1st, 1872. J. E. Townsend, cl'k.

302 UNITED STATES OF AMERICA.

The President of the United States, to the marshal of the United States for the northern district of Florida, greeting:

You are hereby commanded forthwith to arrest Robert H. Gamble, and him safely keep, so that you have his body before the judge of the circuit court of the United States for the fifth judicial circuit and northern district of Florida, on the first Monday of December next, 1872, to answer to a charge of contempt in violating the orders and injunction of said court, made by said court on the 6th day of December, A. D. 1870, in a certain cause in chancery pending in said court in which Francis Vose, is complainant; Harrison Reed, Robert H. Gamble, Frank W. Webster, Simon B. Conover, and John S. Adams, Trustees of the Internal-Improvement Fund of the State of Florida, are defendants. Herein fail not, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 21st day of June, A. D. 1872.

J. E. TOWNSEND, *Clk.*

303 Executed the within warrant of attachment, this the 28th day of June, 1872, by arresting Robert H. Gamble, and releasing him on bond as required by court.

S. CONANT,
U. S. Marshal.

Service, $2.00; 166 miles, 6c, 9.96—11.96.

(Indorsed:) In the United States circuit court. Francis Vose, complainant, vs. Harrison Reed et al., trustees et al., respondents. Attachment for Robert H. Gamble. Filed July 1st, 1872. J. E. Townsend, cl'k.

304 UNITED STATES OF AMERICA:

The President of the United States to the marshal of the United States, for the northern district of Florida, greeting:

You are hereby commanded forthwith to arrest John S. Adams, wherever he may be found, and him safely keep so that you have his body before the judge of the circuit court of the United States for the fifth judicial circuit and northern district of Florida, on the first Monday of December next, A. D. 1872, to answer to a charge of contempt in violating the order and injunction of said court, made by said court on the sixth day of December, A. D. 1870, in a certain cause in chancery pending in said court, in which Francis Vose is complainant and Harrison Reed, Robert H. Gamble, Frank W. Webster, Simon B. Conover, and

John S. Adams, Trustees of the Internal-Improvement Fund of the State of Florida, are defendants. Herein fail not, and have you there and then this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 21st day of June, A. D. 1872.

[SEAL.] J. E. TOWNSEND, *Clk.*

305 Executed the within writ of attachment this the 20th July, 1872, by arresting John S. Adams, and receiving from him bond in sum of $5,000, for appearance 1st Monday Dec., 1872.

S. CONANT,
U. S. Marshal.

Service, $2.00; bond, 50; release, 50—3.00.

(Indorsed:) In the United States circuit court. Francis Vose, complainant, Harrison Reed et al, trustees et al., respondents. Attachment for John S. Adams. Filed July 27th, 1872. J. E. Townsend, clerk.

306 UNITED STATES OF AMERICA:

To the President of the U. States, to the marshal of the United States, for the northern district of Florida, greeting:

You are hereby commanded forthwith to arrest Frank W. Webster wherever he may be found, and him safely keep, so that you have his body before the judge of the circuit court of the United States for the fifth judicial circuit and northern district of Florida on the first Monday in December next, to answer to charge of contempt in violating the order and injunction of said court made on the sixth day of December, in the year, A. D. one thousand eight hundred and seventy, in a certain cause in chancery pending before said court, in which Francis Vose is complainant, and Harrison Reed, Simon B. Conover, Robert H. Gamble, Frank W. Webster, and John S. Adams, Trustees of the Internal-Improvement Fund of the State of Florida et al., are defendants. Herein fail not.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of this court at the city of Jacksonville, in said district, this first day of June in the year, A. D. one thousand eight hundred and seventy-two.

[SEAL.] J. E. TOWNSEND, *Clk.*

307 STATE OF WISCONSIN,
County of Winnebago:

The def't Frank W. Webster, arrested by virtue of the within attachment and suitable bond furnished for his appearance was discharged from custody on this 31st day of July, A. D. 1873.

SHERMAN CONANT,
U. S. Marshal.
By EPHRAIM GIDDINGS,
Deputy.

Service of attachment, 2.00; holding in custody 2 days, 4.00; travel, 1,500, 6c., 90.00; bond, 50; release, 50—97.00.

(Indorsed:) United States circuit court, northern dist. of Florida.

Francis Vose, complainant, vs. Harrison Reed et al., trustees et al., respondents. Attachment for Frank W. Webster. Filed Sept. 2d, 1872. J. E. Townsend, cl'k.

308 UNITED STATES OF AMERICA,
Dist :

Know all men by these presents, that we, Frank W. Webster, and George Reed, and Curtis Reed, and , and , are held and firmly bound unto Sherman Conant, marshal of the United States for the northern dist. of Florida, and to his successors in office, in the sum of five thousand dollars lawful money of the United States, for the payment of which well and truly made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly, jointly, and severally, by these presents, signed with our hands and seal *in* with our seals this the 26th day of July, A. D. 1872.

The condition of the foregoing obligation is such that if the above bounden Frank W. Webster, shall be and appear before the judge of the circuit court of the United States for the fifth circuit and northern district of Florida, on the 1st Monday of December, A. D. 1872, at a court to be holden at the city of Jacksonville, within the northern dist. of Florida, and shall answer unto the said court touching a certain charge of contempt pending against him for having violated and destroyed the injunction of said court made in a certain cause therein pending, in which Francis Vose is plaintiff, and Harrison Reed et al. are defendants, and shall abide the order of said court and not
309 depart therefrom without leave of the said court, then this obligation shall be null and void; otherwise to remain in full force, virtue, and effect.

FRANK W. WFBSTER. [SEAL.]
CURTIS REED. [SEAL.]
GEO. REED. [SEAL.]

Witnesses:
JOHN POTTER, JR.

Curtis Reed being duly sworn, makes oath that he is worth the sum of five thousand dollars over and above all his liabilities, debts, and exemptions.

CURTIS REED.

Subscribed and sworn to before me this 26th day of July, 1872.
JOHN POTTER, JR.,
Court Commissioner, Windago Co., Wis.

George Reed being duly sworn, mades oath that he is worth the sum of five thousand dollars over and above all his liabilities, debts, & exemptions.

GEO. REED.

Subscribed & sworn to before me this 26th day of July, 1872.
JOEN POTTER, JR.,
Court Commissioner, Winago Co., Wis.

316 (Indorsed:) F. W. Webster. Bond. Filed Sept. 2, 1872. J. E. Townsend, cl'k.

311 UNITED STATES OF AMERICA,
Northern District of Florida:

Know all men by these presents that we, John S. Adams, Edward M. Cheney, and George F. Drew, are held and firmly bound unto Sherman Conant, marshal of the United States for the northern district of Florida, and to his successors in office, in the sum of five thousand dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assignees, *surity*, jointly and severally, by these presents. Signed with our hands and sealed with our seals this 21st day of June, A. D. 1872.

The condition of the foregoing obligation is such that if the above bounden Adams shall be and appear before the judges of the circuit court of the United States, for the fifth circuit and northern district of Florida, at a court to be holden at the city of Jacksonville, within the northern district of Florida, on the 1st Monday of December, A. D. 1872, and shall answer unto said court touching a certain charge of contempt pending against him for having violated and disobeyed the injunction of said court in a certain cause therein pending, in which Francis Vose is plaintiff and Harrison Reed et als. are defendants,
312 and shall abide tee order of said court and not depart therefrom without leave of the said court, then this obligation shall be null & void, otherwise to remain in full force, virtue, and effect.

J. S. ADAMS. [SEAL.]
EDWARD M. CHENEY. [SEAL.]
GEORGE F. DREW. [SEAL.]

George F. Drew being duly sworn, makes oath that he is worth the sum of five thousand dollars over and above all his just debts, liabilities, and exemptions.

GEO. F. DREW.

Sworn & subscribed before me this the 24th June, A. D. 1872.
J. E. TOWNSEND, *Clk.*

Edward M. Cheney being duly sworn, makes oath that he is worth the sum of five thousand dollars over and above all his just debts, liabilities, and exemptions.

E. M. CHENEY.

Sworn and subscribed before me this the 25th July, 1872.
EDWIN HIGGINS,
Notary Public.

313 (Indorsed:) Bond. Jno. S. Adams. Filed Oct. 8th, 1872. J. E. Townsend, cl'k.

314 UNITED STATES OF AMERICA.
The President of the United States
To the marshal of the United States for the northern district of Florida, Greeting.

You are hereby commanded forthwith to arrest John S. Adams, and him safely keep so that you have his body before the judge of the circuit court of the United States for the fifth judicial circuit and northern district of Florida, on the first Monday of December next, 1872, to answer to a charge of contempt in violating the orders and injunction

of said court, made by said court on the sixth day of December, 1870, in a certain cause in chancery, in which Francis Vose is complainant, Harrison Reed, Robert H. Gamble, Frank W. Webster, Simon B. Conover, and John S. Adams, Trustees of the Internal-Improvement Fund of the State of Florida, are defendants. Herein fail not, and have you there and then this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 21st day of June, A. D. 1872.

J. E. TOWNSEND, *Clk.*

315 Executed the within writ of attachment this the day of , A. D. 1872, by arresting Jno. S. Adams and holding him to bail in sum of $5,000, to appear at Dec., 1872, term U. S. circuit court, J'ville, Fla.

S. CONANT,
U. S. Marshal.

(Indorsed:) In the United States circuit court. Francis Vose, complainant, vs. Harrison Reed et al., trustees et al., respondents. Attachment for John T. Adams. Filed Oct. 8th, 1872. J. E. Townsend.

316 To Hon. PHILIP FRAZER,
Judge of U. S. District Court for Northern District of Florida.

The undersigned, Frank W. Webster, of Menasha, Wisconsin, late surveyor-general of Florida, respectfully represents:

That he is under bonds to appear before your honor on the first Monday of December next to answer to the charge of contempt of court, in that as member of the Board of Trustees of the Internal-Improvement Fund of Florida, he, as is alleged, violated an injunctional order of your honorable court, addressed to said board and issued sometime in December, 1869, in the suit of Francis Vose against said board.

That he has never seen a copy of the complaint, nor of any other official paper in which the said violation of injunction is set forth.

That he was not summoned to show cause why writ of attachment should not issue against him.

That his only information of the charge against him is the order of the court for his arrest, except such information as he has obtained from unofficial newspaper reports, which are meagre and unre-
317 liable and insufficient and unsafe as a basis for an answer.

That learning from your honor that he could appear before you, by attorney, on the 15th October for the purpose of obtaining release from arrest, he has made every effort in his power to obtain copies of such papers and such information in the case as would enable to make answer to the charge against him.

That he has been unable to obtain such papers and information.

That he is, however, confident that he is not amenable to the charge of violation of said injunction for that,

1st. He sought carefully to avoid any act which could be considered in violation of said injunction, keeping the same in view in all his acts as member of said board of trustees.

2d. Shortly after the issue of said injunction, viz, Jan. 26th, 1870, he left Florida on account of the dangerous illness of his wife, and remained absent for the same reason until about April 5th, 1870.

3d. April 5th, 1870, he ceased to be a member of the said board of trustees by the operation of an amendment to the constitution of

Florida, which united his office (that of surveyor-general) with that of commissioner of immigration.

318 4th. According to his present recollection he did not attend a meeting of the Board of Trustees I. I. Fund after the said injunction was issued.

He further represents that to appear in person before your honor on the first Monday of Dec. next, will impose on him a very heavy expense. Will interfers seriously with his duties as secretary and land agent of the Wisconsin Central Railroad Company, which offices he now holds.

And that to be absent from his wife at that time will imperil her life, as she is in delicate health, and will then be near her confinement.

For the above reasons, and not with any intent or desire to escape any responsibility he may have incurred as a member of said board of trustees, he prays that he either be released from the order to appear before your honor on the first Monday in December next, or be allowed to appear by attorney, and be furnished with official and specific information of the charge to which he is required to make answer.

FRANK W. WEBSTER.

Subscribed and sworn to before me this 15th day of October, A. D. 1872, at Menesha, Winnebago Co., Wisconsin.

J. W. LADD,
Notary Public.

(Indorsed:) Filed Nov. 4, 1872. J. E. Townsend, cl'k. Answer of Frank W. Webster. Filed 1872.

319 In the circuit court of the United States, 5th judicial circuit, northern district of Florida.

F. VOSE, COMPLAINANT
vs.
HARRISON REED, ET AL. THE TRUSTEES OF the Internal-Improvement Fund, et al., defendants.

The taking of testimony in this cause, under the order of said court, appointing A. Doggett, master in chancery pro hac vice, begun on this day, at the office of R. B. Hilton, esq'r, in the city of Tallahassee, district aforesaid.

MYRON H. CLAY, being sworn, says:

My present residence is in Jacksonville; have been there about three months. Immediately before going to Jacksonville, I resided in Tallahassee. My present occupation is that of a lumber

320 dealer. While residing in Tallahassee, I was a member of the firm of M. H. Clay & Co. The business of that firm, was dealing in real estate. The firm was composed of William T. Webster and myself. While carrying on this business, we bought considerable quantities of land of the State of Florida; can't say how much was bought of the State, think, however there were several thousands of acres. The lands purchased embraced all of the different classes of State lands. These lands were paid for in State scrip & coupons of the Pensacola and Georgia Railroad and of the Florida Railroad. The swamp and overflowed and Internal-Improvement lands were mainly paid for in coupons. I know that the coupons used in payments of

the lands were not purchased of any of the members of the internal-improvement board. I bought coupons of David S. Walker, Samuel A. Swann, several parties in Tallahassee and of a firm in Savannah, whose name I do not now remember; think I bought of David
321 S. Walker, something over fifteen hundred dollars of coupons, and gave him about thirty or thirty-five cents on the dollar. Don't remember the names of other parties in Tallahassee. Think I bought some of Tom Archer. The price paid for coupons generally, was from twenty-five to thirty-five cents on the dollar. These coupons were taken at par in the purchase of lands by us from the State.

A printed poster here shown to the witness and put in evidence, and marked A.

The lands specified and designated in the poster belonged to William H. Gleason. These lands were entered by Mr. Gleason himself. He told me that he had paid for them in the past-due coupons of the rail-road companies above designated. I never saw the coupons, nor do I know particularly what road they had been issued by. Mr. Webster, the other member of the firm, was a brother of the former surveyor-general, Frank W. Webster. We continued our business some time after Mr. Webster went out of office.

M. H. CLAY.

322 Sworn to and subscribed this 9th day of February, A. D. 1872.

A. DOGGETT,
Master, pro hac vice.

Ordered that the above examination is adjourned subject to call of master.

A. DOGGETT,
Master, pro hac vice.

TALLAHASSEE, *February* 9, 1872.

Ordered, examination set down for Tuesday, February 27th, 1872, 10 o'clock a. m., at office of R. B. Hilton, city of Tallahassee.

A. DOGGETT,
Master, pro hac Vice.

JACKSONVILLE, *Feb'y* 24th, 1872.

The taking of testimony resumed this 27th day of February, A. D. 1872, at the city of Tallahasse, pursuant to order.

HUGH A. CORLEY, being sworn, says:

When I was secretary of the board of trustees, a record book
323 was kept by me, of the proceedings of the board, and as salesman, I kept an abstract of entries showing the names of purchasers, the lands purchased, the quantity of land so purchased, price per acre, the amount of purchase money, the date of purchase, name of person to whom deed was issued and date of deed.

Before a deed could issue to a purchaser of land it was necessary for him to file with the salesman the receipt of the treasurer of the board, showing that the purchase-money had been paid. These receipts are kept on file in the office of the salesman. The books are kept now, and the same course is pursued in the office of salesman. The receipts on file in the salesman' office are each for a certain number of dollars and cents. If anything beside money was paid to the treasurer the receipts of file in this office do not disclose that fact.

Since the eleventh day of November last there has been sold of

swamp and overflowed lands, eight thousand six hundred and
324 eighty-four $\frac{69}{100}$ acres for nine thousand two nundred and forty dollars and fifty four cents. Of these lands six thousand four hundred and sixty $\frac{88}{100}$ acres were sold to Williams & Swann, at one dollar per acre under their special contract. Of the internal-improvement lands three hundred and eleven $\frac{88}{100}$ acres have been sold for five hundred and twenty-nine dollars and eight cents.

The act of Congress of September 4th, A. D, 1841, donated to the State of Florida for internal-improvement purposes, five hundred thousand acres. I have carefully summed up the quantity of land approved to the State under said act of Congress, and find the quantity to be four hundred and forty-eight thousand seven hundred and twenty-six $\frac{16}{100}$ acres, of which two thousand six hundred and ten acres & $\frac{68}{100}$ were caused by Spanish grants, located subsequently to their approval, or lay within the limits of Alabama or in that portion of the State which had been previously sold by Georgia, leaving to the internal-im-
325 provement fund, four hundred and forty-six thousand one hundred and fifteen $\frac{48}{100}$ acres. At the date of the passage of the internal-improvement act, January 6, 1855, there had been sold of these lands one hundred and thirty-six thousand eight hundred and thirteen $\frac{31}{100}$ acres. Under the provisions of said act the several railroad companies received twelve thousand nine hundred and ninety-six $\frac{86}{100}$ acres of said lands. The swamp and overflowed lands granted to the State of Florida, under the act of September 28th, 1850, and for which the State has received patents, amount to ten millions six hundred and forty-four thousand three hundred and thirty-three $\frac{14}{100}$ acres. Of these there passed to the several railroad companies, under the internal improvement act, five hundred and seventy-three thousand seven hundred and twenty-six $\frac{56}{100}$ acres.

The price of internal-improvement lands per acre has been based upon the appraised valuation of each tract. The greater portion of them were appraised at one $\frac{25}{100}$ dollars per acre; but some
326 of them were appraised higher and even as high as five dollars per acre.

HUGH A. CORLEY.

Sworn to this 27th day of February, A. D. 1872.

A. DOGGETT.
Master in Chancery, pro hac vice.

Ordered, examination adjourned till 4 o'clock p. m. to-morrow.

A. DOGGETT,
Master pro hac vice.

WILLIAM STEWART being duly sworn, says:

I am cashier of the Freedman's Savings and Trust Company located in the city of Tallahasse. Mr. Adams, treasurer of the Internal-Improvement Fund, made an arrangement with me by which I was to receive the proceeds of the sales of internal-improvement lands. This arrangement commenced about April 5th, 1871.

327 The following exhibit, marked B, is a correct statement, as shown by the books kept by me, of the money and values received by me, from whom received, and in what they consist; all of which has been accounted for in my last settlement with Mr. Adams.

WILLIAM STEWART.

Sworn to and subscribed before me this 28th day of February, A. D. 1872.

A. DOGGETT,
Master in Chancery, pro hac vice.

Ordered, examination adjourned till 10 o'clock, a. m., to-morrow.

A. DOGGETT,
Master, pro hac vice.

S. B. CONOVER, being sworn, says:

I know of no payments made by several railroad companies on account of the sinking fund subsequent to the time testified to in my previous testimony. The instrument made on account of the sinking fund, in State bonds of Florida, testified to in my former testimony,
328 amounted to three thousand dollars, and the remaining one thousand dollars in non-tax-paying scrip. The history of these instruments in State bonds and State scrip is as follows: There were certain expenses of the State government, particularly of the State penitentiary, which it was necessary to meet. Under the instructions of the board, I applied all the sinking fund in my hands to meet those expenses, and received for the same State scrip or State warrants in corresponding amounts. Three thousand dollars of this scrip I invested in six per cent. State bonds, under the authority of the board, and the one thousand dollars left still remains in scrip. Don't remember the market value of the State bonds at the time of investment, or whether they had any market value, that is, fixed market value. When I was treasurer of the board the secretary of the board kept a record book of the proceedings of the same, and I, as treasurer thereof, kept a
329 book of receipts and expenditures, and also a book of stubs corresponding with the receipts given to the salesman of the board. This book of stubs shows the name of purchaser, kind of land, number of acres, price per acre, and the kind of funds received in payment of lands, and the date of payment. I do not know what books were kept in the surveyor-general's office. I do not know whether the present treasurer of the board keeps a book of receipts and expenditures the same as I kept. The book of record of proceedings of the board is kept by Mr. Adams, but in what place, or where he keeps it, I do not know. But I do know that under a resolution of the board he is required to keep it in Tallahassee. There have been several occasions when members of the board have desired to have access to the books, but could not find them, Mr. Adams being absent from Tallahassee. He keeps an office as collector of customs of the United States and as commissioner of emigration of Florida, in Jacksonville, and spends but little of his time in Tallahassee. When I was treasurer I made an
330 annual report as such to the board. I am not aware that the present treasurer has made any report to the board. If there has been a contract made by the board with Swann & Williams, at a meeting of the board when I was not present, I do not now remember about it. I know nothing of my own knowledge, as to the disposition of lands belonging to the fund since December, 1870, nor of the proceeds thereof.

S. B. CONOVER,
Treasurer of Florida.

Sworn to and subscribed this 29th of February, 1872.

A. DOGGETT,
Master in Chancery, pro hac vice.

Ordered, examination adjourned, subject to call of master.

A. DOGGETT,
Master, pro hac vice.

TALLAHASSEE, *Feb'y 29th*, 1872.

Ordered, examination set down for 10 o'clock a. m., March 8th,
331 1872, at office of master, in city of Jacksonville.

A. DOGGETT,
Master, pro hac vice.

JACKSONVILLE, *March* 2, 1872.

Ordered, examination adjourned to 10 a. m., Tuesday, March 12th next ensuing, office of master.

A. DOGGETT,
Master, pro hac vice.

JACKSONVILLE, *March* 18, '72.

Ordered, examination to 10 a. m., Thursday, March 14, 1872, to be held at office of master.

A. DOGGETT,
Master, pro hac vice.

JACKSONVILLE, *March* 12, 1872.

Ordered, examination adjourned to 10 a. m., March 15, at office of master.

A. DOGGETT,
Master, pro hac vice.

THURSDAY, *March* 14, 1872.

JACKSONVILLE, *Friday, March 15th*, 1872.

Pursuant to order of adjournment examination resumed and
332 continued at office of master.

EDWIN HIGGINS being sworn, says:

My name is Edwin Higgins; am inspector of customs at the port of Jacksonville. My appointment to such position was made by J. S. Adams, collector of customs, and confirmed by the Secretary of the Treasury. I entered upon the duties of my office about the twenty-sixth day of December last. Prior to that time I was a partner of Mr. Adams in the real estate business, and am still so. The nature and character of that business is to sell and dispose of such real estate as may be placed in our hands for that purpose. The official position of Mr. Adams under the State of Florida is that of commissioner of immigration and of lands. He was commissioner of immigration at the time of my first business connection with him. I have acted as clerk for Adams under his position of commissioner of immigration. My duties
as such clerk were to attend to the office while he was away and
333 to do such writing as he might give me, I have not in any way assisted said commissioner in the sale of internal-improvement lands, except in the sale of lands for coupons which fell due prior to September, 1861—I mean prior to July, 1861. I can't say whether the lands so sold were internal improvement lands or swamp or overflowed lands. All that I know is that they were State lands. I think the lands sold, amounted to about twelve hundred dollars, and were entered at one dollar and twenty-five cents per acre. In the way of our land

business, I have entered for other persons about one hundred and sixty acres of the common-school lands or sixteenth sections, at one dollar and a half per acre. They were paid for in State scrip receivable in payment of school lands. Can't say as to date of payment. Some of these lands were entered for J. J. Daniels, and some for Harrison Starrett. Don't remember the names of any other parties. Mr. Adams, I
334 believe, is salesman and treasurer of the internal improvement board. Since I have been in employ of Mr. Adams, I do not know of his having directly sold any of the lands belonging to the Florida Railroad Company. His general course was to refer applicants for the purchase of Florida Railroad lands to Swann & Williams for particular information. Swann & Williams and Mr. Adams were agents of the Florida Railroad in the sale of its lands. I believe they constituted a company called the land agency. I believe they have sold some of the lands. Can't say how much, nor at what price per acre. Don't know how they were paid for. Mr. Adams has been agent for the sale of lands, other than those belonging to the internal-improvement fund. These lands belonged to parties in the States, and the pieces ranged from forty cents to one dollar and upwards. His compensation for the sale of lands was from two and a half to five per cent.

335 After examining the printed notice or advertisement handed him, marked C, says: Mr. Gleason left a number of such advertisements at our agency, that is J. S. Adams & Co., and presumed they were left there to be placed upon the lists of lands for sale. Not to my knowledge have coupons been offered or received in payment of lands by Mr. Adams since I have been with him, except as I have stated before. I have seen none of the book' of the Internal-Improvement Board, except the record of its proceedings. The coupons paid for lands entered for other parties, were coupons detached from bonds of the Florida Railroad. These coupons I received from Mr. Adams, who had purchased them of other parties unknown to me. They were obtained from Mr. Adams at thirty-three and one-third cents; I do not know how the coupons were verified as being due by the Internal-Improvement Fund.

EDWIN HIGGINS.

Sworn to and subscribed before me this 15th day of March, 1872.

A. DOGGETT,
Master in Chancery, pro hac vice.

336 Ordered, examination adjourned to such time as may be designated by master.

A. DOGGETT,
Master, pro hac vice.

Ordered, examination be resumed 3 o'clock p. m., March 26th, 1872, at office of master.

A. DOGGETT,
Master, pro hac vice.

MARCH 25TH, 1872.

JACKSONVILLE, *Tuesday, March 26th*, 1872.

Examination resumed at office master persuant to order.

J. J. Finley, representing complainant, and Horatio Bisbee, the Trustees of the Internal-Improvement Board, & E. A. Studwell, the Florida Improvement Company.

J. S. Adams, in response to the subpœna duces tecum, served upon

him, and being sworn, says: That he brings in the record-book
337 of the proceedings of the board of trustees, and a bond for twenty-one thousand dollars issued by the State of Florida, and eight thousand five hundred dollars in bonds of the Tallahassee Railroad Company, with coupons attached, and twenty-seven thousand nine hundred and ten dollars in coupons cancelled by the board, and twelve hundred and seventy-seven dollars and ninety-eight cents in coupons received for land, canceled by endorsement. And further says: I am secretary and treasurer of the Internal Improvement Board of the State of Florida, and am a member of the board by virtue of my official position as commissioner of lands and immigration. I was made commissioner of immigration in February, 1869, and afterwards commissioner of lands and immigration. I became secretary of the board October 26th, 1869, and on the twenty-second day of December, 1870, was
338 made treasurer thereof, and became salesman of the board when I became commissioner of lands and immigration, which was in the early part of May, 1871. The Florida Railroad Company is only a month in arrears to the sinking fund—the road is not practically. The money paid into the sinking fund by the Florida Railroad Company since I have been treasurer have been applied entirely to the payment of the expenses in this suit. When I say expenses of this suit I mean to include attorneys' fees. They were paid by me as treasurer, under the authority of the board and of the attorney-general. A contract was entered into by the board with Williams and Swann, of Fernandina, for the selection of swamp and overflowed lands under the act of Congress of September 28th, 1850. I mean the act of Congress granting swamp & overflowed lands to the State of Florida. It was a part of the contract entered into with Swann and Williams that they were to map and plat the lands selected, and to return to the land-
339 office at Tallahassee the maps and plats, and accurate lists of the lands selected. It was a contract in writing executed by Governor Reed under the sanction and approval of the board. This contract is in Tallahassee, and is also a part of the records of the board of trustees. It is recorded in the record of the proceedings of the board on pages five hundred and two and five hundred and three. Swann and Williams are now in the performance of their contract, it not having been completed. They have been paid something on their contract, amounting to ten thousand dollars, & paid in lands at one dollar per acre. I think this is about the amount paid them. Since I have been a member of the board coupons received have been cancelled and destroyed, except those I have testified to above. Before they were destroyed accurate lists were made of them, and these lists are in the office of the treasurer of the board. I do not know
340 that any coupons were turned over to the present board by their predecessors. The coupons deposited by M. S. Littlefield, and recognized by the board as receivable for lands, were not deposited with me, but as I have understood were deposited with the comptroller. I have no personal knowledge of the bonds to which these coupons belonged or were detached from. As treasurer of the board, I was authorized to exchange non-tax-paying scrip at par, for coupons receivable for lands to the amount of fifteen thousand dollars. Such exchange was made to the amount authorized, fifteen thousand dollars. Cannot tell the class of coupons received in exchange. No coupons are received in payment of lands of a later date than of March, 1861. The board does not require any record to be kept of coupons presented for payment for verification and inspection before payment is author-

ized of them. When they are received a list is made, and cou-
341 pons destroyed. A printed paper shown to the witness, Mr. Adams, and marked D, and he says it is a correct report made by him as commissioner of lands and immigration of the State of Florida.

J. S. ADAMS.

Sworn to and subscribed before me this 26th day of March, 1872.

A. DOGGETT,
Master in Chancery, pro hac vice.

Ordered, examination be adjourned till to-morrow morning 10 o'clock a. m.

A. DOGGETT,
Master in Chancery, pro hac vice.

MARCH 26, 1872.

JACKSONVILLE, *March* 27.

Examination resumed at office of master at 3 o'clock p. m.

MYRON L. MICKLES being sworn, says:

The ten thousand dollars of coupons deposited with Mr. Adams,
342 for the first one hundred thousand acres of land, located for the Florida Improvement Company were purchased by Philo D. Mickles from Frank W. Webster, salesman of the board of trustees and a member thereof, for John J. Murritt, president of the Florida Improvement Company, as I understood, these coupons were purchased of Mr. Webster, who was agent for Mr. Yulee, and deposited by the company as a payment for the purchase of the first one hundred thousand acres. I mean that the coupons were paid for the lands. At that time I was acting as selecting agent of lands for the company, and Charles W. Goddard, the president of the company, asked me how I accounted for the hole punched in the coupons, and asked if that injured them. I saw some of the coupons, but none of them that were punched. Mr. Yulee told me that they were punched in passing from the hands of one agent to another, but that they were not can-
343 celed. I think the coupons were purchased in June or July of one thousand eight hundred and seventy, and deposited in October following. I know that Mr. Webster, one of the trustees, offered coupons for sale. He offered them at forty cents on the dollar. I do not know that any of the other trustees ever offered any coupons for sale.

Cross-examined:

I do not know of my own knowledge that any of the coupons were paid to or deposited with Mr. Adams, nor do I know of my own knowledge, that any of them were purchased.

MYRON L. MICKLES.

Sworn to & subscribed before me this 27th day of March, 1872.

A. DOGGETT,
Master, pro hac vice.

Ordered, examination be adjourned till to-morrow morning, 11 o'clock a. m., at office of master.

A. DOGGETT,
Master in Chancery, pro hac vice.

THURSDAY, *March* 28.

Examination adjourned over till 11 a. m. to-morrow, at office of master.

A. DOGGETT,
Master, pro hac vice.

344 FRIDAY, *March* 29.

Examination adjourned subject to call.

A. DOGGETT,
Master in Chancery, pro hac vice.

Examination set down for July 2nd, at Tallahassee, 4 p. m., office of R. B. Hilton.

A. DOGGETT,
Master in Chancery, pro hac vice.

JACKSONVILLE, *July* 2.

Examination adjourned over subject to call.

A. DOGGETT,
Master in Chancery, pro hac vice.

TALLAHASSEE, *July* 2.

JACKSONVILLE, *August* 2, 1872.

Examination set down for Wednesday, August 6, in Tallahassee, 4 p. m., at the office of Hugh A. Corley, esq'r.

A. DOGGETT,
Master, &c.

345 Circuit court of the United States 5th judicial circuit, northern district of Florida.

FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED, GOVERNOR OF THE STATE of Florida; Robert H. Gamble, comptroller of the State of Florida, et al., Trustees of the Internal-Improvement Fund of Florida, et al., defendants.

Testimony & proof taken by Aristides Doggett, special examiner, duly appointed by Jos. P. Bradley, associate justice of Sup. Court U. States, to take the same in the above stated cause.

The taking of testimony & proof begun at the city of Tallahassee, in said district, on Saturday, November 11th, A. D. 1871, at 10 o'clock a. m.

HUGH A. CORLEY, witness for the compl't, being sworn, says:

I am acquainted with the compl't in this suit, & with most of the defendants, but not with all of them; am one of the defendants
346 myself. I became connected with the Florida land system in the year eighteen hundred & fifty-three, as a clerk in the swamp-land office, & continued in that office till the year eighteen hundred & fifty-eight. The swamp-land office was the office of Randolphs & Wells, State agents for the selection of swamp lands under the act of Con-

gress approved Sept. 28th, 1850. Randolph & Wells were appointed by the governor of Fla. Under their appointment it was a part of their duty to furnish township plats, & for convenience, that their labors as selecting agents might proceed, & at the same time that said plats might be made available in carrying on the sales of the swamp lands, the said agents established an office in the capital at Tallahassee, from which the register of State lands obtained his information in making sales of swamp lands. In the years eighteen hundred & fifty-eight & eighteen hundred & fifty-nine I was clerk in the State land
347 office & deputy register. In December, eighteen hundred & fifty-nine, I was appointed register of public lands for the State of Florida, & entered upon the discharge of my duties on the first day of January, one thousand eight hundred & sixty. I continued in the office as register, till the spring of one thousand eight hundred & sixty-five, when I was relieved by the military authorities of the United States. From that time till November of the same year the office was closed. In November of that year I was reinstated & continued in the discharge of the duties of the office till the first of July, 1868. I was succeeded by Ozaias Morgan, surveyor-general, the name of the office having been changed by the constitution. Mr Morgan remained in office but a few weeks & was succeeded by Frank W. Webster. Mr. Webster continued in said office till the same was mesged in that of commissioner of lands & immigration, under the constitutional amendment which was adopted in the spring of the present year,
348 as register of public lands. I was one of the Trustees of the Internal-Improvement Fund, & was also salesman of the board; as such salesman, all application' for the purchase of lands were made to me, & upon my certificate, the money was paid to the treasurer of the board, upon the purchaser filing his receipt; that is, the receipt of the treasurer, the entry was made upon the books & plats, & issued for the land. The salesman kept an abstract of all entries so made; these abstracts showed how much money was received from the sales of land. From the organization of the board of trustees, Chas. A. Austin, was treasurer of the board & continued so till May, 1867. During this period of time Mr. Austin was also State treasurer. In May, 1867, Major John Beard was elected treasurer of the board, but declining to accept, I acted as treasurer during the remainder of my official term. My last report to the board as salesman, was November first, 1866. This report
349 shows that from November seventeenth, 1865, to November first, 1866, there was sold in the aggregate of internal-improvement & swamp land $34,395\frac{50}{100}$ acres, yielding $51,572.68. This report is predicated upon the records of the office. Of the funds in the hands of the former treasurer, these were turned over to me as acting treasurer twenty nine guaranteed bonds of the Florida, Atlantic & Gulf Central Railroad, of one thousand dollars each, & Tallahassee Railroad bonds belonging to the sinking-fund of said road, amounting to eighty-five hundred dollars. I also received from the board of trustees a bond of the State of Florida for twenty-one thousand dollars, originally payable to Edward N. Dickerson, the same being an investment of the sinking fund of the Florida Railroad Company, made by Moses Taylor, financial agent, under instructions from the board of trustees. I also received twenty-four thousand six hundred & ninety-nine dollars from the
350 sales of internal-improvement & swamp lands. I also received nineteen thousand dollars in bonds of the State of Florida, which had previously been given to Ferdinand McCloud, for negotiation &

payment of coupons of the Florida, Atlantic & Gulf Central Railroad, & which were returned by him. To these State bonds were attached coupons amounting to one thousand three hundred & thirty dollars. To the Tallahassee Railroad's bonds there were attached past-due coupons amounting to three thousand two hundred & seventy-two dollars & fifty cents (3,272.50). I also received from William E. Jackson one hundred & twenty-six thousand three hundred & fifteen dollars in coupons of the Florida, Atlantic & Gulf Central Railroad in payment for swamp lands. I know nothing of any other assets beyond what I have stated. I received from the sale of the Florida, Atlantic & Gulf Central Railroad one hundred & eleven thousand dollars. The Tallahassee Railroad bonds for eight thousand & five hundred dollars, & the twenty-one thousand dollars bond of the State
351 of Florida, I turned over to S. B. Conover, who succeeded me as treasurer of the board. The twenty-nine bonds of one thousand dollars each of the Florida, Atlantic & Gulf Central Railroad were sold after the sale of said road for twenty cents on the dollar, amounting to five thousand & eight hundred dollars. The nineteen thousand dollars in bonds of the State of Florida, with the coupons amounting to thirteen hundred & thirty dollars, were paid over to Edward Houston, being part of the thirty thousand dollars ordered to be paid him under restoration of the board of trustees of January 4th, 1868, for the purpose of paying the interest on the guaranteed bonds of the Pensacola & Georgia & Tallahassee Railroads companies, falling due on the first of January, 1868. The past-due coupons of the Tallahassee Railroad bonds, amounting to three thousand two hundred and seventy-two $\frac{50}{100}$ dollars were paid by transferring that amount from the general
352 fund to the sinking fund of the Tallahassee Railroad Company, & said amount was, by order of the board of trustees, turned over to Edward Houston, financial agent of the board, for investment in the class of securities named in the internal-improvement act of 1855. The amount received from the sale of the internal-improvement & swamp lands, together with the five thousand and eight hundred dollars, received from the sale of the Florida, Atlantic & Gulf Central Railroad bonds were disposed of as follows: nine thousand six hundred & seventy ($9,670) dollars was paid to Edward Houston to complete the payment hereinbefore mentioned, of thirty thousand dollars; three thousand three hundred & sixty-six dollars & eighty cents were paid to the former chairman & secretary of the St. Johns & Indian River Canal commissioners for past salaries; one thousand dollars was paid me for six years' service as secretary & one year's service as treasurer; for salaries for the year, attorneys' fees & miscel-
353 laneries expenses, including expense of the sale of the Florida, Atlantic and Gulf Central Railroad, about six thousand & five hundred dollars were paid. The remainder was applied in payment of coupons of the several railroad companies. My account, showing an exact statement of expenditions is in the hands of the secretary of the board, at Jacksonville. The coupons received from William E. Jackson for swamp lands were canceled by me. Of the one hundred & eleven thousand dollars received from the sale of the Florida, Atlantic & Gulf Central Railroad, eighty-three thousand two hundred dollars were invested in the purchase of four hundred & sixteen g'aranteed bonds of said company of one thousand dollars each, the remaining twenty-seven thousand eight hundred dollars were turned over to Edward Houston, financial agent of the board, for the purpose of purchasing the outstanding bonds of said company, or investing the same

354 according to law. The four hundred and sixteen bonds purchased were canceled by me. I know nothing about the funds which passed into the hands of Edward Houston, financial agent of the board—that is what disposition was made of them. I heard him say that he had purchased some bonds.

HUGH A. CORLEY.

Sworn to & subscribed this 11th day of Novem., A. D. 1871.

A. DOGGETT,
Examiner.

Examination adjour' till Monday, November 13th, 9 a. m.

A. DOGGETT,
Examiner.

TALLAHASSEE, *Monday*, 9 *a. m.*, *Nov.* 13*th.*

Examination of HUGH A. CORLEY resumed.

The expenses connected with the sale of the Florida, Atlantic & Gulf Central Railroad, including attorneys' fees, amounted to about three thousand dollars. About three hundred dollars were paid attorneys fees, for services other than those connected with the sale of the
355 said road. I am now employed by Mr. Adams, the salesman of the board as clerk. I have been so employed since the first day of June last. There have been sold since the first day of June last seven thousand two hundred & seventy-two acres & $\frac{70}{100}$ for seven thousand nine hundred & ninety-five dollars & thirty-six cents. Of these lands, four thousand & one hundred & $\frac{26}{100}$ acres were sold to Williams & Swann at one dollar per acre, under a special contract for selecting swamp lands. This is a small sale of lands as compared with sales when I was previously in the land office. I attribute the smal'ness of the sales to the fact of many of the lands having been withdrawn from the fund by being granted to the Florida Improvement Company & Southern Inland Navigation Improvement Company, & to the raising of the price of swamp lands to one dollar & a quarter per acre, & to the general scarcity of money in the country & to the injunction prohibiting the trustees from securing State scrip in payment thereof.
356 Nothing was paid by the Pensacola and Georgia Railroad Company, while I was acting as treasurer, on account of not earnings. No demand was made on said road by the trustees to my knowledge, on account of not earnings; a demand may have been made upon that company between the years 1865 & 1867, by Mr. Austin, the these treasurer, & payments may have been made. But of that I know nothing. I recollect that coupons of the Florida Railroad bonds, belonging to the complainant, were presented to the board in the year one thousand eight hundred & sixty-six for payment, & payment was refused for want of funds. According to the report made by the several railroad companies to the Internal-Improvement Board, the interest upon the guaranteed bonds of the Pensacola & Georgia & Tallahassee Railroad companies was paid up to January first, one thousand eight-hundred & sixty-three. The Florida, Atlantic & Gulf Central
357 Railroad company reported that funds were deposited in the Merchants and Planter's Bank of Savannah, to pay the interest on the bonds issued by them due up to January first, one thousand eight hundred & sixty-three, & public notice given thereof.

The last provision made for the coupons of the Florida Railroad Company, was for the payment of the coupons which fell due in September

of one thousand eight hundred & sixty. In the years eighteen hundred & sixty-seven, & sixty-eight, the board was informed that there was a large amount of coupons of the Florida, Atlantic & Gulf Central Railroad outstanding, the validity of which it did not recognize. These coupons were said to be in the hands of Col. Sanderson & other parties in Jacksonville. These coupons were supposed to have been paid by the company, or to have been past due at the time of the negotiation of the bonds, & consequently no charge against the fund. In January, one thousand eight hundred & sixty-eight, the board paid thirty-thou-
sand dollars of coupons of the Pensacola & Georgia and Talla-
358 hassee Railroad Company, falling due first of January of that year, in State bonds & State scrip, in consideration that the president of said company should pay off all the coupons of said company due prior to that date. Whether the president did actually pay off said coupons, I do not know; I do not know what disposition has been made of the funds received from the sale of lands for the last six months.

HUGH A. CORLEY.

In the taking of the above testimony R. B. Hilton, esq'r., represented the complainant & Mr. Corley, in propria persona, represented himself.

A. DOGGETT,
Examiner.

The foregoing testimony of Hugh A. Corley being this day read over to him he swears to the truth & correctness of the same.

Tallahassee, Feb. 29th, 1872.

A. DOGGETT,
Master in Chancery, pro hac vice.

359 SIMON B. CONOVER, a witness for the complainant, being sworn, says:

I am treasurer of the State of Florida, and as such a member of the Internal-Improvement Board of the State. I am acquainted with the complainant in this suit, & know most of the defendants; am one of the defendants myself. I assumed the duties of my office on August first, one thousand eight hundred & sixty-eight, & thereby became a member of the Board of Internal Improvement. A short time subsequent to that time I was elected treasurer of the board. No assets whatever came into my hands as treasurer of the board from my predecessor. From the first of August to the thirty-first day of December, one thousand eight hundred & sixty-eight, I received from the sales of internal-improvement & swamp land twelve thousand two hundred & sixty-two dollars & thirty-one cents. The expenditions during that period amounted to four hundred & fifty nine dollars & fifty-two cents.

During the year one thousand eight hundred & sixty-nine I
360 received from the same source twenty thousand four hundred & thirty-eight dollars seventeen cents. The expenses for same period of time amounted to seventeen thousand two hundred & thirty-nine dollars & one cent. During the year one thousand eight hundred & seventy-three was received from the same source thirty-nine thousand six hundred & ninety-six dollars & twenty-one cents.

The expenses for the same period of time amounted to nine thousand six hundred & eighty-one dollars & sixty-nine cents. I ceased being the treasurer of the board some time in the latter part of December of the latter year, according to the best of my recollection. I turned over

to my successor, J. S. Adams, forty-five thousand & sixteen dollars & forty-seven cents.

In the expenditions for the year one thousand eight hundred & sixty-nine, for the month of February I paid coupons of the Pensacola & Georgia & Tallahassee Railroads to the amount of eight thousand one hundred & fifty-eight dollars & fifty cents. I also paid
361 during the month of June to John P. Sanderson coupons of the Florida, Atlantic & Gulf Central Railroad one thousand & fifteen dollars, & also paid to Papy & Puter, for attorneys' fees, one thousand dollars, most of the eight thousand-dollar lot of coupons paid, matured on the first of July, one thousand eight hundred & sixty-eight, & some of them January, one thousand eight hundred & sixty-nine. In July of one thousand eight hundred & sixty-nine, I paid J. P. Sanderson coupons of the Florida, Atlantic & Gulf Central Railroad amounting to nine hundred & eighty dollars, & also paid in November, coupons mostly of the Tallahassee Railroad, to Mrs. Long amounting to seven hundred & seven dollars, & in same month to Papy & Puter, attorneys' fees five hundred dollars, & Mr. Cantfield, attorney's fees, four hundred & fifty dollars.

In Feb'uary of one thousand eight hundred & seventy, I paid Mr. Cantfield, attorney's fees, four hundred & sixty-nine dollars, & in
362 June paid Papy & Puter, attorneys' fees, three hundred & fifty dollars. In November of same year, I paid Papy & Puter, attorneys' fees, three thousand dollars.

S. B. CONOVER.

Sworn to & subscribed this 13th day of November, A. D. 1871.

A. DOGGETT,
Examiner.

Examination adjourned till to-morrow morning, 9 a. m.

A. DOGGETT,
Examiner.

TALLAHASSEE, *Tuesday*, 9 *a. m.*

Examination of SIMON B. CONOVER resumed.

The coupons of the Florida, Atlantic & Gulf Central Railroad amounting to one thousand & fifteen dollars, paid to J. P. Sanderson, matured from March, one thousand eight hundred & sixty-four, to March one thousand eight hundred & sixty-eight, inclusive, & those for nine hundred & eighty dollars of the same railroad, paid to said Sander-
363 son, matured from March, 1861, to September, 1863, inclusive. Those paid to Mrs. Long matured from January, one thousand eight hundred & sixty-eight, to January, one thousand eight hundred & sixty-nine, inclusive. The coupons paid were in a perfect condition, in nowise erased or defaced, & were detached from the bonds. Lands purchased in eighteen hundred & seventy were mainly paid for in past-due coupons. All coupons which matured in the year one thousand eight hundred & sixty, & subsequent thereto, were received in payment of lands. These coupons I turned over to my successor, Mr. Adams. Some time subsequent to the passage of the resolution by the Internal-Improvement Board, granting lands to the Florida Improvement Company, Mr. Adams deposited with me, as treasurer of the board, a package, said to contain ten thousand dollars in past-due coupons, intended to be applied in payments of lands granted to said company. Mr. Adams

tendered them in payment of lands granted to the company, but I declined to so receive them, & simply took them on deposit.

364 On July twenty-first, one thousand eight hundred & sixty-nine, there was paid to me by the Florida Railroad Company, on account of the sinking fund, two thousand two hundred & eighty dollars, & on September nineteenth, one thousand eight hundred & seventy, there was paid by same road on account of same fund eleven hundred & forty dollars; on November twenty-ninth, one thousand eight hundred & sixty-nine, the Florida, Atlantic, & Gulf Central Railroad Company paid, on account of same fund, three hundred & fifteen dollars; on June twenty-first, one thousand eight hundred & seventy, same road paid on account of same fund two hundred & sixty-five dollars. The eleven hundred & forty dollars paid on account of the Florida Railroad was paid by Governor Reed, for period from the first of May, one thousand eight hundred & sixty-nine, to November first, one thousand eight hundred & sixty-nine. It was paid in Florida State scrip, having at

365 that time a market value of about fifty cents on the dollar. I was informed by Mr. Roberts, agent of the road, that this amount was paid Governor Reed by draft on some northern bank, about the time when the same fell due from the road to the sinking fund. All of the other payments made on account of the sinking fund by the railroad companies were made in current funds. These funds, under a resolution of the board, have been invested in State bonds of Florida.

In March one thousand eight hundred & seventy, there was loaned to the State penitentiary, of the internal-improvement funds, three thousand dollars. There was paid to me as treasurer of the board for salary for the year one thousand eight hundred & seventy, six hundred dollars; & paid to Mr. Webster, as clerk of the surveyor-general, one thousand dollars. The ten thousand dollars of coupons deposited by Mr. Adams was returned to him by me, about the time of my ceasing to be treasurer of the board, some time in the year of one thou-

366 sand eight hundred & seventy. Mr. Gleason, as agent of the Southern Inland Navigation & Improvement Company, deposited with me a package of coupons, to be applied in payment of lands granted to the company, from time to time, as the same should be selected. The amount in the package, I do not know, as I never counted them. As near as I can remember about ten thousand dollars of the package were applied in payment of lands selected. The balance of the package was turned over to Mr. Adams. To the best of my recollection I do not remember to have received any coupons in payment of lands older than those of one thousand eight hundred & sixty-one. I kept no record of coupons received, showing by which of the various roads they had been issued. Scrip received in payment of lands was all tax-paying scrip. The largest portion of this scrip was, by order of the board, ex-

367 changed at various times for non-tax-paying scrip. Consequently there was but very little tax-paying scrip turned over by me to my successor, Mr. Adams. At the present time the difference in value between the two kinds of scrip is about fifty per cent., but at that time the tax-paying scrip was worth about fifty cents on the dollar, & non-tax-paying about thirty-five cents on the dollar.

I received from Mr. Corley a bond of the State of Florida to E. M. Dickerson, amounting to twenty-one thousand dollars, and eight thousand & five hundred dollars of bonds of the Tallahassee Railroad Company, with coupons attached amounting four thousand four hun-

dred & ninety-eight dollars, or thereabouts, which I turned over to Mr. Adams and took his receipt thereof.

S. B. CONOVER.

The testimony of S. B. Conover was this day read over to him & by him sworn to as being correct.

Tallahassee, Feb. 29, 1872.

A. DOGGETT,
Master in Chancery, pro hac vice.

JACKSONVILLE, *November* 22, 1871.

The examination set down for this day is hereby adjourned to such a day as may be agreed upon.

368 A. DOGGETT,
Examiner.

JACKSONVILLE, *Duval County, November 27th*, 1871.

Examination resumed this day:

H. Bisbee, jr., representing the complainant, and I. P. C. Emmons, representing the Internal Improvement Board and the Southern Inland Navigation Company.

J. S. ADAMS, a witness for the complainant, being sworn, says:

I am a member of the Internal-Improvement Board of Florida, as commissioner of lands and emmigration. I am treasurer of the board; I became such treasurer about a year ago; precise time do not remember; think, however, it was in November. My predicessor was S. B. Conover.

369 Question propounded by Mr. BISBEE: State the nature of your duties as treasurer of the board.

(Question excepted to by Mr. Emmons.)

Answer. My duties are the same as those in other associations, to receive & account for the sale of internal-improvement, swamp, & overflowed lands.

Question propounded by Mr. BISBEE: Did you receive any funds from your predicessor?

(Question excepted to by Mr. Emmons.)

Answer. I did.

(Mr. Emmons objects to all questions as to what funds in kind or amount, time when received by him as treasurer, & what disposition was made of them, which are the subject-matter of record in the proceedings of said board; & this objection is to apply to each & all the questions asked & answered in this examination.)

This is answered to *by* Mr. Bisbee: I received in funds about one hundred & thirteen thousand dollars ($113,000).

370 Mr. Emmons desired to ask the witness if the subject of examination as embraced in the foregoing objection is evidenced in writing on the records & the files of the board whereof he is treasurer.

(To this Mr. Bisbee objected.)

The question which Mr. Emmons desires to propound is overruled on the ground that it is not a proper stage of the examination to raise such a question, but properly belongs to the cross.

The funds received consisted of State scrip, railroad coupons, & bonds either of the State or of the railroads.

There was one State bond for twenty-one thousand dollars. The whole amount of bonds was twenty-nine thousand five hundred dollars

I think. The balance, that is, the difference between the twenty-one thousand-dollar bond & the twenty-nine thousand & five hundred dollars of bonds, was either of State or railroad bonds; can't say
371 which. I received from Mr. Conover of railroad coupons about eighty thousand dollars.

Witness desires to correct his statement as to the amount of railaoad coupons, & says about seventy thousand dollars instead of eighty thousand. Can't say exactly, but Mr. Conover's receipt will show the exact amount. The balance of the one hundred & thirteen thousand dollars was in State scrip, tax-paying and non-tax-paying. Can't state the amount of each.

I have received funds from other parties since I have been treasurer of the board. I received from the Florida Improvement Company in payment for lands conveyed, in coupons of a date prior to those of the complainant, seventeen thousand nine hundred dollars.

(Mr. Emmons objects to the witness testifying as to any conveyances of land.)

I can't say what amounts have been received from other par-
372 ties. The records in the office show precisely. The cash received from the sales of land is deposited with the Freedman's Bank in Tallahassee. I can't tell how that account stands. I received from the Florida Improvement Company, in addition to the seventeen thousand nine hundred dollars, ten thousand dollars in railroad coupons for the first conveyance of lands; this was received in October, of 1870, prior to the injunction in this case & was placed by me with S. B. Conover, the treasurer of the board, & is a part of the one hundred & thirteen thousand dollars, received by me from him. I think these coupons of ten thousand dollars were mainly of the Florida Railroad. Don't know whether these coupons were prior in date or not to those of the complainant. I have received no other funds except from the sale of lands.

I can't give the names of the parties from whom these funds
373 have been received. I have received no funds from the Southern Inland Navigation Company of any description. I have received none from the Florida Canal & Inland Transportation Company. I do not remember of any person but Swaim from whom money or coupons have been received for the sale of lands. I do not know it to be a fact that any coupons were received of Mr. Swaim. All these things are a matter of record. I only know that thirty thousand dollars in coupons were received from Mr. Gleason; whether on his own account or the Southern Inland Navigation Company, can't say. I did not receive it from Mr. Gleason; it is included in the one hundred & thirteen thousand dollars received from Mr. Conover. I do not know of any other parties from whom the board has received funds whose names I can now recall.

374 Question propounded by Mr. BISBEE: What disposition has been made of funds since you have been treasurer?

(Mr. Emmons excepts to this question on the ground that it has already been stated by witness that all these transactions are a matter of record & proceedings & file of the board.)

Answer. Part of the funds have been expended in current expenses of the board; part of them I have on hand. A complete list of the coupons was taken by the board & the coupons canceled & destroyed. This list contains a full description of the coupons. I have on hand the bonds, amounting to twenty-nine thousand five hundred dollars, twenty-seven thousand nine hundred dollars in coupons ($27,900), received of the Florida Improvement Company & of E. A. Stredwell, &

about six thousand dollars in coupons for the credit of W. H. Gleason.

This is all I have on hand except what is in the bank in Talla-
375 hassee. There may be on hand in the bank from three to five hundred dollars in cash. The expenses of the office consist in hire of a clerk, expenses of this litigation, postage, and other office expenses.

Of the seventy thousand dollars in coupons not destroyed, I have on hand. I do not know of my own knowledge that the comptroller of the State has in hand funds belonging to the Internal-Improvement Fund.

Question propounded by Mr. BISBEE: Have you any information as to funds in the hands of the comptroller belonging to the fund?

(Question excepted to.)

Ans. None whatever, except from the published reports of the comptroller & treasurer.

Question propounded by Mr. BISBEE: Does Mr. Houston, former president of the Pensacola & Georgia Railroad, owe the board of trustees anything; if so, how much, & on what account?

(Question excepted to by Mr. Emmons.)

Answer. In his account with the board, as their confidential
376 agent, to take up certain railroad bonds, he admits an indebtedness to the fund of some ten thousand dollars; but the account has never been settled. I cannot say as to any indebtedness by the several railroads on account of net earnings. The indebtedness due this month by the Florida Railroad to the fund has not been paid. I cannot say as to any of the other railroads being indebted to the sinking fund. I do not know whether the Pensacola & Georgia Railroad has paid anything to the sinking fund since I have been a member of the board. I cannot say how much there is on hand of the sinking fund. Of the money in the sinking fund paid by the Florida Railroad; some fifteen hundred of it went to pay the expense of the Vose suit in New York, that is to say, this same suit. The records & the books of the board one part of them here & part in Tallahassee,
377 I have here with me the last record book of the board. This book does show what bills have been audited & ordered paid; that is, most of them.

Question propounded by Mr. BISBEE: What books of account & of record are kept by the board of trustees?

(Question excepted to by Mr. Emmons.)

Answer. A book of record of the doings of the board; a record of applications for entry of lands; a record of treasurer's receipts; a record of deeds. These are all I think of. So far as I now remember, there is no book kept by the board showing the receipts & expenditions, that is to say, a book kept for that special purpose.

Mr. Adams desires to correct the testimony as taken down in this particular:

Where it is stated that seventeen thousand nine hundred dollars in coupons were received from the Florida Improvement Company in payment for lands conveyed it should read that the said amount was received of E. A. Studwell.

378 J. S. ADAMS.

Sworn to & subscribed this 27th day of November, 1871.

A. DOGGETT,
Examiner.

385 Railroad Company show that up to same time there had been taken up & cancelled by said company of coupons issued by said company amounting to $113,761. All of these coupons were burned by myself & Hugh A. Corley, on July 6, 1868. This constitutes about all the coupons taken up to said time by said railroad companies. The books of said railroad companies show that very nearly all of the coupons of these two companies were taken up to July first, 1867, but do not show how many of said coupons are now outstanding.

J. H. FLAGG.

Sworn to & subscribed this 9th day of October, 1872.

A. DOGGETT,
Master in Chancery, pro hac vice.

HUGH A. CORLEY being sworn, says:

386 During the administra' of David S. Walker, gove'nor, State scrip was receivable in payment of lands. All scrip during that administration was tax-paying. When lands were paid for in scrip the entries made of such payments were the same as if they were paid for in money. In other words, there was no distinction made between cash & scrip. There is no record during that administration showing what lands in quantity or kind were sold for scrip, nor the date of such sales, nor the names of the persons to whom sold. The lands sold to E. M. Dickerson were conveyed to him on June first, 1867, & were paid for in coupons of the Florida Railroad Company. I cannot state the amount of said coupons. These coupons were paid over to C. A. Austin, then treasurer of the board, who never furnished me with the amount of coupons. The lands sold were E. Jackson; were conveyed to him June 29th, 1868, & were paid for in coupons of the Florida, Atlantic & Gulf Central Railroad Company.

387 These coupons amounted to $126,315. While I was a member of the board of trustees, or while I was acting as salesman, or while I was acting as treasurer thereof, there was no record made of the dates of maturity of coupons received in payment of lands sold. The coupons paid by Jackson had all matured prior to June 29, 1868. I am not aware that there is anything among the records of the Internal-Improvement Board describing the coupons given in payment of lands sold, by the bonds from which they were detached or by their dates, except a record of the respective numbers of the bond from which the coupons were detached paid by Jackson.

HUGH A. CORLEY.

Sworn to & subscribed this 9th of October, A. D. 1872.

A. DOGGETT,
Master in Chancery.

Examination adjourned over till to-morrow morning 9 a. m., & to be held at the State land office.

A. DOGGETT, *Master.*

Examination resumed pursuant to order of adjournment.

HUGH A. CORLEY recalled, and examination of him continued:

388 The statement marked "S" is a true & correct exhibit of the lands sold for coupons from December 1st, 1871, to June 3d, 1872, so far as is shown upon the books of the salesman's office.

The additions to the exhibits, marked "K" & "L" of swamp lands

& internal-improvement lands sold during the months of July, August, & September of 1872, are also taken from the books of the salesman's office, & are correct.

HUGH A. CORLEY.

Sworn to before me.

A. DOGGETT,
Master, &c.

S. B. CONOVER, being sworn, says:

I found a lot of books in the office of treasurer of the board, but I have never been able to ascertain through them in what condition the internal-improvement fund or the sinking fund of the several railroads were when I became treasurer of the board. While I was treasurer of
389 the board there was no record made of the dates of maturity of the coupons received in payment of lands sold, nor was there any record made describing such coupons by the bond, from which they were detached, or by their dates.

The statement marked "F" is taken from the book kept by me as treasurer of the board, & shows everything received by me from the several railroads on account of the sinking fund.

S. B. CONOVER.

Sworn to this 10th of October, A. D. 1872.

A. DOGGETT,
Master in Chancery.

Examination adjourned over to 10 a. m., Tuesday, October 15, & to be held in Jacksonville, at office of the master.

A. DOGGETT,
Master, pro hac vice.

JACKSONVILLE, *October 15th*, 1872.

390 Examination resumed pursuant to order of adjournment.

J. S. ADAMS, being called & sworn, says:

No payments were ever made to me while I was treasurer of the board by the Florida, Atlantic & Gulf Central Railroad Company, or by the Florida Central Railroad Company, on account of the sinking fund. The account marked U is a correct statement of receipts & expenditions as shown by the books of the salesman's office. The exhibit marked V is taken from the records of the proceedings of the board of trustees, is a true & correct copy of the original.

J. S. ADAMS.

Sworn to before me.

A. DOGGETT,
Master, &c.

Examination adjourned over till 10 o'clock a. m. to-morrow morning.

OCTOBER 16.

Examination resumed pursuant to order of adjournment.

391 Examination of J. S. ADAMS continued:

The records of my office show that the following coupons of several railroad companies have been destroyed:

June 5th, 1872.	Pensacola & Georgia R. road	$15,878 50
" 5th, 1872.	Tallahassee R. road	$ 2,765 00
" " "	Florida Railroad	"28,860 00
" " "	Florida, Atlantic & Gulf Cen. R. R.	27,421 00
	Total	$74,924 50

And that on February 26, 1872, the following bonds were destroyed:

Bonds of Pensacola & G. Railroad	$807,600
Coupons attached thereto	856,167
	$1,663,767
Bonds of Tallahassee Railroad	$153,100
Coupons attached thereto	75,019
	$228,119

These coupons & bonds were cancelled by the trustees by being burnt. The Florida Road has paid me on account of the sinking fund as follows:

From November 1, 1869, to November 1, 1870	$2,280
" " 1st, 1870, to May 1, 1871	1,140
Total	$3,420

This is all that has been paid me by said railroad.

J. S. ADAMS.

392 Sworn to before me.

A. DOGGETT,
Master, &c.

Examination adjourned over to Thursday, October 17th, 11 o'clock a. m., & to be held at Fernandina.

A. DOGGETT,
Master, pro hac vice.

393 FERNANDINA, *October 17th*, 1872.

Examination resumed pursuant to order of adjournment.

JOHN HEDGES, being sworn, says:

I am treasurer of the Atlantic & Gulf & West India Transit Company. This is the same railroad company as the Florida Railroad Company. As treasurer, I have in my possession the books of said company.

The books of said company show that there has been paid by said company on account of the sinking fund as follows:

By draft on New York, March 19, 1868, 30 days	$4,230 00
Draft on B. C. Lewis & Son " 10, 1871, in favor of J. S. Adams for	$219 50
Draft on A. Rogers, cash'r, Mar. 10, 1871, in favor of J. S. Adams for	310 50
Cash paid J. S. Adams April 14, 1871	140 00
May 1, 1871, paid by Mr. Yulee to J. S. Adams	100 00

Draft on E. N. Dickerson, for am't due fund, on November 1, 1871 ..... 1,140 00
Draft on N. P. Bank 1,140 00

My impression is that the last payment was made to the fund
394 to meet what was due up to May 1st, 1872. If any other payments have been made to the fund by the company since March 19, 1868, the books in my possession do not show it.

JOHN HEDGES.

Sworn to this 17th of October, 1872.

A. DOGGETT,
Master, &c.

Examination adjourned over to Tallahassee, Monday 12 m., October 21, 1872.

A. DOGGETT,
Master, pro hac vice.

395 TALLAHASSEE, *October* 21, 1872.

Examination taken up pursuant to order of adjournment.

Examination of HUGH A. CORLEY resumed.

The lands sold to H. L. Hart were deeded as follows: January 31, 1868; April 23, 1868; September, 1868; & November, 1868. The deeds of January 31, 1868, conveyed 2,192$\frac{62}{100}$ acres of swamp lands, 1,190$\frac{10}{100}$ acres of swamp lands, 3,228$\frac{50}{100}$ of swamp, & internal improvement lands 339$\frac{12}{100}$. The deeds of April, 1868, conveyed 946$\frac{95}{100}$ of swamp lands, 3,306$\frac{62}{100}$ of swamp lands, & 1,092$\frac{87}{100}$ internal improvement lands. The deed of September, 1868, conveyed 11,059$\frac{78}{100}$ of swamp lands, & 1,719$\frac{81}{100}$ of internal improvement lands. In November of 1868 there were conveyed 8,043$\frac{09}{100}$ of swamp lands. The abstracts showing the monthly sales of swamp & internal improvement lands, marked K and L, do not embrace the lands sold to the Florida Improvement Company,
396 those sold to the Southern Inland Navigation Company, nor those to the Pease Creek Immigrant & Agricultural Company, nor the sales to E. N. Dickerson, nor those to William E. Jackson, except those sold to the Southern Inland Navigation & Improvement Company for coupons deposited previously by Gleason with S. B. Conover. Those are embraced in the abstracts. The books of the salesman's office do not show any sales of lands for scrip during the year 1871, nor has there been any sold for scrip during the present year. The sale of lands for coupons stopped about the 3d of June of present year.

HUGH A. CORLEY.

Sworn to & subscribed October 21, 1872.

A. DOGGETT,
Master, &c.

Examination of J. S. ADAMS continued.

The abstract marked W is a true exhibit of coupons received
397 for lands sold for the period of time therein expressed, & is made up from the books of the land-office.

J. S. ADAMS.

Sworn to and subscribed October 21, 1872.

A. DOGGETT,
Master, &c.

Examination adjourned over till to-morrow morning.

Examination of HUGH A. CORLEY continued.

I am acquainted with the section of country in which H. L. Hart operated under his contract. I do not know that any swamp lands have been drained in consequence of his work; but I do know that the Oclawaha has been rendered navigable for steamers from Silver Spring up to Lakes Griffin, Eustis, & Harris, by Mr. Hart. Before Mr. Hart commenced his work there was no steamer navigation above Silver Spring. About one hundred & twenty-five miles of navigation by steamer has been opened by Mr. Hart under his contract.

398 HUGH A. CORLEY.

Sworn to & subscribed October 22, 1872.

A. DOGGETT,
Master, &c.

Examination adjourned over to Jacksonville, Friday, October 25, 11 o'clock a. m., to be held at office of master.

A. DOGGETT,
Master, &c.

OCTORER 22, 1872.

JACKSONVILLE, *Friday, Oct.* 25, 1872.

Examination set down for this day adjourned over to to-morrow morning, 11 o'clock a. m.

A. DOGGETT,
Master, &c.

JACKSONVILLE, *Saturday, October* 26, 1872.

Examination resumed pursuant to order of adjournment.

Examination of HUGH A. CORLEY resumed.

339 The four hundred & sixteen bonds cancelled by me were cancelled by me within the month of January or February of 1871. The precise date I cannot now remember. To these bonds were attached all the coupons falling due after March first, 1868. These coupons were destroyed by me at the time of the cancellation of the bonds. The number of coupons paid by William E. Jackson for lands purchased by him were 3,609, & were past due when paid, & were 'ach for thirty-five dollars.

HUGH A. CORLEY.

Sworn to before me.

A. DOGGETT,
Master, &c.

Examination adjourned subject to call of master.

A. DOGGETT,
Master, &c.

JACKSONVILLE, *November* 6, 1872.

Examination set down for to-morrow morning, 11 a. m., at office of master.

A. DOGGETT,
Master.

400 THURSDAY, *November* 7, 1872.

Examination began pursuant to order of adjournment.

J. J. Finley representing the complainant.

EDWARD A. STREDWELL, being sworn, says:

I am vice-president & managing director of the Florida Improvement Company, & have been acting as such for at least eighteen months. The Florida Improvement Company purchased lands of The Trustees of the Internal-Improvement Fund. The contract for the purchase was made before I became a member of the company. The deeds for about one hundred thousand acres of land were delivered about six months after I became a member of the company. The contract of purchase was ten cents an acre, & the company was to send a settler for every three hundred & twenty acres so purchased. If the company should fail in furnishing such settler, then it was to pay fifty
401 cents an acre for all lands on which failure was made in putting settlers on. And the company, or individuals members thereof, gave a bond for one hundred thousand dollars that the contract should be carried out as to the said one hundred thousand acres.

The said one hundred thousand acres were paid for in coupons. The aggregate amount of the coupons paid was ten thousand & ten dollars, exclusive of the interest due upon the coupons at the time of payment.

The company protested against the disallowance of the interest due on the coupons.

The coupons paid were of the Florida Railroad bonds. I do not now remember the numbers of the bonds on the coupons. The coupons paid fell due September first, eighteen hundred & fifty-seven, & March first, eighteen hundred & fifty-eight. I do not remember the dates of issue of the coupons, but they were paid to Mr. Adams, October 11, 1870.

The Florida Improvement Company made no subsequent pur-
402 chases of the trustees. I do not know from whom the coupons were purchased. I do know, however, that they were all purchased in Florida. I think the company obtained the coupons several months prior to their being paid over to the trustees. I can't say how the coupons were cancelled, but think they were cancelled by being punched by Mr. Adams. I have not seen those coupons since. Nothing was said at the time the coupons were paid in about their being fraudulent, nor at any other time was anything said about their being fraudulent, to my knowledge.

After the order of court directing a reconveyance by the company of the lands, no claim was made by the company for the coupons paid. I do not know of my own knowledge that the company made a demand upon the trustees for the return of the coupons paid.

The company reconveyed the land, as ordered by the court, directly after the making of the order. I made the reconveyance in my
403 capacity as managing director of the company.

I, as an individual, purchased lands of the trustees in March, 1871, & the purchase consisted of about four hundred thousand acres. The contract of purchase was substantially the same as that made with the Florida Improvement Company alluded to above. I have paid upon this contract over seventeen thousand dollars in coupons at their face value, protesting against the disallowance of interest due on them. The above amount is the aggregate paid by me. I do not know how

many coupons, nor the numbers thereon, so paid, but a part of them became due March first, 1857, & the balance March first, 1858, & were paid to Mr. Adams March 15th, 1871. I do not remember how many of said coupons fell due on March first, 1857, nor how many fell due on March first, 1858. All these coupons were purchased in Jacksonville, & I got them from my father-in-law's estate. I do not know of whom my father-in-law got them. When I paid these coupons to Mr. Adams
404 he remarked that he would either cancel or destroy them. The coupons were put by him in an envelope. I have not seen them since. Nothing was said at the time the coupons were paid in about their being fraudulent by any one present, nor at any other time. I have reconveyed these lands to the trustees as ordered by the court. This reconveyance took place directly after the order of court, & to the best of my remembrance my wife joined in the deed of reconveyance. Since the reconveyance I have made no demand upon the trustees for the coupons given in payment of the lands, nor of their value in money, as I considered the matter being in court, & for further adjudication.

EDWIN A. STUDWELL.

Sworn to this 7th day of November, 1872.

A. DOGGETT,
Master, &c.

JACKSONVILLE, *November* 12, 1872.

405 Examination set down for to-morrow morning, 11 a. m.

A. DOGGETT,
Master, &c.

WEDNESDAY, *November 13th*, 1872.

Examination commensed pursuant to order of adjournment.

D. GRIFFITH AMBLER, being sworn, says:

I am a banker in the city of Jacksonville, & have been so for about three years. The six per cent. State bonds, numbers 103, 104, 105 of the issue of 1869, shown to me had a market value *value* in the years 1869 & 1870 of about thirty or forty cents on the dollar. This estimate of their value is predicated on the figure or price at which bonds of the same issue were said to have been hypothecated with Bayne & Co., or Sonter & Co., in New York.

Can't put any market value on these bonds now; that is, there is no sale for them. Can't say what the twenty-one-thousand-dollar
406 bond issued to E. N. Dickerson is worth. Basing my judgment upon the supposition that comptroller's warrants, chargeable under the head of common schools, are receivable in payment of school lands, I should say that the comptroller's warrants shown me are worth about fifty cents on the dollar. Don't know what the market value is of bonds issued by the Tallahassee Railroad Company, that is the guaranteed bonds.

D. G. AMBLER.

Sworn to this 13th day of November, 1872.

A. DOGGETT,
Master, &c.

Examination adjourned over to Friday, 11 a. m., November 15th, 1872.

A. DOGGETT,
Master, &c.

J. S. ADAMS examined, and says:

I do not remember the precise date of the payments made to the sinking fund by the Florida Railroad Company, testified to me
407 in my examination on October 16th last. The receipts given by me to Mr. Hedges, the treasurer of said board, show the dates of said payments. The amount due the sinking fund by the Florida Railroad for the six months ending November first, 1871, was not paid to me. I can't say from whom the coupons, amounting to $146.24, taken in payment of lands for the month of June, 1871, were received. These coupons are in my possession. Without access to their coupons, I can't say from what railroad bonds they were taken. I have the list of the bonds destroyed in February 26, 1872, & think it shows the numbers of the bonds & coupons. I have a list of the coupons destroyed in June 5, 1872, but can't say whether the list has the number of coupons on it or not. These coupons were destroyed by burning. There was no one present when they were destroyed except my own family, they having been burnt at my house. I have now in my possession coupons amounting to twenty-one hundred & eighty-six $\frac{67}{100}$ dollars, that were received in payment for lands, & cancelled as they
408 were received. This is all of funds belonging to the Internal-Improvement Fund which I have in my possession. The seven hundred & fifty-nine coupons, or thereabouts, *continued* in two envelopes, one marked E. A. Studwell, & the other marked N. G. Co., were paid in respectively by E. A. Studwell & the Florida Improvement Company, in payment of the lands deeded to said Studwell & said company, & were turned over by me to Mr. Day, my successor in office as treasurer. I suppose that all of said coupons were cancelled by being punched. If any of them were not cancelled, they should have been. The instrument used by me in cancelling was a single punch, so far as I cancelled them. A portion of them had been cancelled previously by mistake in the Florida Railroad office. In reference to this, a correspondence was had with Mr. Yulee, in which he explained that they had been cancelled by accident, & his letter in reference to the matter is now in my possession. Can't say
409 how many were so cancelled by mistake. I have no knowledge that the board of trustees has a punch. The one used by me was my own. I do not know of any other member of the board cancelling coupons by punching them. Myself or clerk received & answered all correspondence in regard to the lands. The letters answered are mostly thrown into the waste-basket or destroyed, & some filed. Copies of letters sent from the office are seldom made or kept. When moneys are paid into the office for lands a receipt thereof is given. No copies of these receipts are kept, & the books show from whom the money is received. The entry for cash received is made in a book of sales. Since June last nothing but money has been received in payment of lands sold. My impression is that prior to my being made treasurer the books do not show or designate the kind of funds received in payment of lands. The board has, since December last, by resolution, reserved lands from sale. These lands are for the benefit of the Jackson-
410 ville & St. Augustine Railroad Company. I do not now recollect of any other being reserved. If there have been the of the board show it. I do not think or now remember to have given any instructions to Mr. Corley not to sell any of the lands deeded to the Florida Improvement Company. The account of Col. E. A. Huouston

with the board is on file. I will furnish the original account and hand it to the master.

J. S. ADAMS.

411 (Indorsed:) Testimony. Francis Vose vs. Trustees Int. Imp. Fund et al. Filed Nov. 19th, 1872. J. E. Townsend, clerk.

412 UNITED STATES OF AMERICA,
Northern Dist. Florida:

Know all men by these presents that we, Harrison Reed, Halstead H. Hoeg, & C. L. Robinson, are held and firmly bound unto Sherman Conant, marshal of the United States for the northern district of Florida, and to his successors in office, in the sum of five thousand dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly, jointly, and severally by these presents. Signed with our hands and sealed with our seals this the 21st day of June, A. D. 1872.

The condition of the foregoing obligation is such that if the above-bounden Reed shall be and appear before the judge of the circuit court of the United States for the fifth circuit and northern district of Florida, at a court to be holden at the city of Jacksonville, within the northern district of Florida, on the 1st Monday of December, A. D. 1872, and shall answer unto said court touching a certain charge of contempt pending against him for having violated and disobeyed the injunction of said court in a certain cause therein pending, in which Francis
413 Vose is plaintiff and Harrison Reed et als. are defendants, and shall abide the order of said court, and not depart therefrom without leave of the said court, then this obligation shall be null and void; otherwise to remain in full force, virtue, and effect.

HARRISON REED. [SEAL.]
HALSTEAD H. HOEG. [SEAL.]
C. L. ROBINSON. [SEAL.]

Executed in our presence the day and year above mentioned.
ARTHUR D. BARNETT.
H. B. BUBE.

NORTHERN DISTRICT OF FLORIDA:

Halstead H. Hoeg, being duly sworn before me, say that they each worth the sum of ten thousand dollars over and above *are* their just debts, liabilities, and constitutional exemptions.

H. H. HOEG.

Subscribed & sworn to, are true in substance and in *such*, this 26th Nov., 1872.

JOSEPH H. DURKEE,
United States Court, North. Dist. Florida.

414 (Indorsed:) In the U. S. cir. c't. Francis Vose vs. The Trustees of the Internal-Improvement Fund. Bond of Harrison Reed. Filed Nov. 29, 1872. J. E. Townsend, cl'k.

415 UNITED STATES OF AMERICA:

The President of the United States to the marshal of the United States for the northern district of Florida, greeting:

You are hereby commanded forthwith to arrest Harrison Reed, and

him safely keep, so that you have his body before the judge of the circuit court of the United States for the fifth judicial circuit and northern district of Florida, on the first Monday of December next, A. D. 1872, to answer to a charge of contempt in violating the orders and injunction of said court, made by said court on the sixth day of December, A. D. 1870, in a certain cause in chancery pending in said court, in which Francis Vose is complainant and Harrison Reed, Robert H. Gamble, Frank W. Webster, Simon B. Conover, and John S. Adams, Trustees of the Internal-Improvement Fund of the State of Florida, are respondents. Herein fail not, and have then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of this court, this 21st day of June, A. D. 1872.

[SEAL.] J. E. TOWNSEND,
Clk U. S. C. Court.

416 Executed the within writ of attachment by arresting Harrison Reed, and receiving from him bond in the penal sum of $5,000, to appear at Dec. term U. S. court at J'ville, Fla.

S. CONANT,
U. S. Marshal.

Service, 2.00; bond, .50; release, .50—3.00

(Indorsed:) United States circuit court. Francis Vose, complainant, vs. Harrison Reed et al., trustees, et al., respondents. Attachment for Harrison Reed. Filed Nov. 29, 1872. J. E. Townsend, cl'k.

417 Respondent Harrison Reed, governor of the State of Florida & ex-officer one of the Trustees of the Internal-Improvement Fund of said State to the rule on this case heretofore obtained.

Respondent, answering, states tha the has read the answer of J. S. Adams in this case and believes the same to be true and hereby adopts said answer of respondent Adams as his own.

Respondent, further answering, states that it is true as alleged in complainant's petition, that the expenses of the trustees in the payment of counsel engaged in litigation have been heavy but, that this expenditure was made from necessity in the defense of the sinking fund against the demand of complainant that the sinking fund which was created for the payment of the principal of the bonds of complainant and other bondholders should be devoted to the payment of the coupons of complainant, Francis Vose, and in the judgment of respondent & his cotrustees, the defense of the sinking fund against unlawful claims and demands is a principal duty of said trustees.

Respondent, further answering, states that the claim of said com-
418 plainant has been urged in such manner as to create litigation to an unnecessary amount and causing an unnecessary and inordinate expense.

And this respondent in this connection desires to refer to the exemplification of record of judgment, in a suit between F. Vose & the trustees, of the supreme court of New York, herewith filed from the findings of the court, in which it will appear that at the time of that judgment, there were pending three suits of the same nature between complainant & these trustees, thus of necessity causing very great expense, while a single suit in the courts of this State would have been amply sufficient to establish the right of parties, and this respondent states that in the defense of said suit in said exemplification determined, the trustees were

compelled to expend upwards of $5,000, and that while the court in that case found that at the beginning of that suit there were $28,000 in the hands of Moses Taylor, this respondent and his corespondents are informed by the complainant that said fund in Taylor's hands was by means of said suit and the orders of court therein diminished to less
419 than $17,000. And respondent, further answering, says that in all his acts and doings as one of the trustees, he has been entirely governed by a sense of official duty, in the light of his own best sense of discretion and judgment. That he is not conscious of having disobeyed any order of the court, but with entire respect & deference to the authority of said court has sought to discharge his duty as an officer of the State, and does hereby submit himself to the orders of said court and is willing & desirous to make such other & further disclosure in the case as the court may require, and prays the court that he may be discharged from the contempt of which he has been adjudged to be guilty.

HARRISON REED,
Governor of Florida.

Sworn to before me this 17th day of December, 1872.
J. E. TOWNSEND, *Clerk.*

(Indorsed:) F. Vose vs. Harrison Reed et als. Answer of Harrison Reed, governor. Filed Dec. 17, 1872. J. E. Townsend, cl'k.

420 In the U. S. circuit court for the northern district of Florida.

FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED ET ALS, TRUSTEES OF INTERnal-Imp. Fund of Florida, et als.

The answer of J. S. Adams, commissioner of lands & immigration, and ex-officio trustee of the Internal-Improvement Fund of said State of Florida, to the rule heretofore issued in the above case upon the petition of the complainant, filed April 22d, 1872.

Respondent, answering, says that he has never intentionally violated any of the orders of the immigration, or any other of the orders of the court in the case; that he has never attempted to evade the same, but has faithfully and honestly endeavored & intended to yield a full obedience to compliance with all the orders of court in said cause, to the best of his knowledge, ability and judgment.

Respondent also denies that the charges in said petition generally set forth as to the management of the said Internal-Improve-
421 ment Fund, and the application of the monies & property to it belonging are true; or that he has been guilty of any intentional fraud or misconduct, or made any improper application to the use of himself, or of any other party, or made any improper disposition of said property for the benefit of any other person, as in said complainant's said petition is charged.

Respondent, further answering, says, in reference to the specific allegations of misconduct in the complainant's said petition alleged, that the transaction with Southern Inland Navigation Company, or W. H. Gleason, alleged to have occurred in the month of June, and subsequent to the hearing in this case before his honor Judge Bradley, did not occur at that time, but that the conveyance referred to was executed and delivered in February of that year, several months prior to

the hearing before Judge Bradley, and was made pursuant to a contract executed long before, under which the parties interested were entitled to have had such conveyances executed & delivered long before their actual execution & delivery. That the $28,116.01 in
422 the annual report of this respondent reported as received from W. H. Gleason, and alluded to in the petition of complainant, had for many months previous to June, 1871, been on deposit with S. B. Conover, the treasurer, who preceded this respondent in said office, and were reported as received in June, 1871, because the lands for the payment of which the said $28,116.01 had been deposited, although by a previous contract due to said W. H. Gleason, whenever he should designate the same and tender judgment therefor, according to the terms of said contract, were not in fact designated by said Gleason till the said month of June, 1871, many months after the price of said lands had been deposited with the said Conover, as aforesaid, and therefore this respondent reported the amount as received at the time when the lands were designated & deeds executed.

With regards to the allegation in the petition of complainant in regard to the conveyance of 100,000 acres of land to the Florida Improvement Company, this respondent denies that any violation of the injunction arose therefrom, and states that the said conveyance to said Florida Improvement Company was executed, and the price of
423 the lands so conveyed was received, in the month of October, prior to the December in which said injunction issued, and in regard to this, this respondent begs leave to refer to a letter respecting said conveyance from Judge Bradley, a copy of which is herewith filed.

And this respondent, further answering, denies absolutely any intentional misconduct in the conveyances of land made to Swain & Williams, and in regard to the contract made with Swain & Williams for the selection of swamp & overflowed lands, this respondent adopts the answer of his corespondent, S. B. Conover, relating thereto, as his own, and refers thereto as containing a true and correct account thereof. And in further reference to the true *sections* with said Williams & Swain, this respondent states that he has not any the least personal or pecuniary interest in said contract, nor has any other of the trustees, as he believes. And this respondent further states that said Swaim and this respondent are coagents for the sale of lands belonging to the Florida Railroad, and to some of the bondholders of that road, and that there is no other partnership of any kind existing between them.

This respondent denies that said Swain & Williams have acted as his agents in the sale of State lands, and states that said Swain &
424 Williams, under and *beg* virtue of their contract with the trustees for the selection of lands have at all times since they began to select and report, had a credit at the State land office of a large amount due them under said contract, and that their receipts for their compensation for services under said contract have been received in payment for land, and the receipts thus taken charged against the compensation due them, and that thus the lands sold by Swain & Williams were lands owning to them by virtue of their contract, and so belonged to them, and immediately upon their order ceased to belong to the fund.

This respondent, further answering, says that it is true that during the year 1871, an exchange of $15,000 in scrip for an equal amount of coupons was made, but that this was done in accordance with a resolution of the trustees adopted on the 12th day of March, A. D. 1870.

That such exchange of one class of State securities for another has,

from time to time, and frequently occurred, from the time of the establishment of the fund, and that in such exchange this respondent and his cotrustees acted according to their best judgment and in use of their best discretion, knowing that more than three-fourths of all the claims against the fund had been paid and satisfied in less than half the
425 time allowed therefor; and considering the State to be the residuary owner of the fund, this respondent has consented to the occasional exchange of tax-paying for non-tax-paying scrip, for the relief of the State penitentiary to provide food and clothing for the prisoners, for the promotion of education, and for the payment of interest on the bonds of the State, and to assist in the payment of necessary expenses of the State, but in such exchange neither this respondent nor, as he believes, his corespondents have wilfully mismanaged the fund or misconducted themselves, but have endeavored to perform their duties to the State and the fund to the best of their ability and according to their best judgment. Copies of various resolutions of the trustees concerning such exchanges are annexed. This respondent, further answering, denies that any receipt of coupons for land has been secret or fraudulent, as alleged in said complainant's petition, but that all such receipts have been made public in the annual reports made to the legislature, as will appear from a copy of such report hereto appended, from which published report were drawn the facts upon which many of the charges of fraud were based.

This respondent, further answering, says, in reply to the allegation in complainant's petition, that the funds in the hands of the
426 trustees have b*ig* mismanagement been rendered to a value not exceeding $35,500, that said allegation is not true, and for corroboration would refer to the consent decree obtained in this case at the instance and with the consent of complainant, in which the par value of the funds in the hands of the trustees is fixed at $50,000.

And this respondent, further answering to the allegation of the complainant's petition, of looseness in keeping the accounts of sales of land and of the receipts of the treasurer and his expenditures, that the same were fully answered in the answer of this respondent filed herein April 29,1872, to which he begs leave to refer. And this respondent, further answering to the charge of refusing obedience to the consent decree of December 16th, 1871, obtained in this cause, states that he did for himself, and as he then supposed authorized by the majority of trustees, give his assent to said decree, and did sign the same, and in so doing acted according to his best discretion, and published the reasons by which he was actuated in his annual report to the legislature, to which as appended, he begs leave to refer, and this respondent was ready to carry out said decree on his part according to the directions in said decree contained. But this respondent avers that the direction
427 of said decree as to the investment of the sinking fund is not correctly stated in said petition of said complainant, where he alleges that the trustees were ordered to pay over the sinking fund "within 30 days from its date." This respondent states that such direction was that "within 30 days, and upon the payment by the J., P. & M. R. road of $100,000, said sinking fund should be invested as ordered," and this respondent considered the decree as one entirely to be carried out as one whole and as their treasurer did refuse to take any action in paying over the sinking fund until the accompanying condition of the payment of the $100,000, specified as a condition thereof should be fulfilled.

And this respondent, further answering, says that he took no further

action under said decree because, as is stated in his answer herein filed April 29th, 1872, he was informed on application to the clerk of this honorable court, that said consent decree had been forbidden to be entered on the docket, as being irregular, informal, and of no effect.

And this respondent, further answering, says in reference to the allegation of having received coupons for land since the issue of the injunction, that no coupons have thus been received except those
428 maturing prior to March 1st, 1861, which in said complainant's petition is declared to be the date of the first of complainant's coupons; that of such from various purchasers, he has received during the eighteen months previous to June, 1872, when the receiver took charge of the fund intrusted to the respondents about $5,000 for lands in coupons prior to those of Mr. Vose, but that in so doing he supposed he was acting in strict accordance with the direction of the injunction.

And this respondent, further answering, says that he has never in any of his official acts wilfully or willingly disobeyed any of the orders of the court in said case, but has at all times to the best of his abilities & by the use of his best discretion endeavored to discharge his duties to the fund & the State in full obedience to the orders of this court—in full respect for its authority.

And this respondent hereby fully submits himself to the orders of court, and desires to make any other or further answer in the case that may be directed by the court, and prays that he may be discharged from the contempt of which he has adjudged guilty.

J. S. ADAMS.

Sworn to before me this 17th day of December, 1872.

J. E. TOWNSEND, *Clk.*

429 (Indorsed:) Francis Vose vs. Harrison Reed et al. Answer of John S. Adams. Filed Dec. 17th, 1872. J. E. Townsend, cl'k. Exhibits accompanying the answer of J. S. Adams, are below.

430 In the United States circuit court, northern district of Florida.

FRANCIS VOSE
vs.
HARRISON REED ET AL, TRUSTEES OF THE Internal-Improvement Fund of Florida.

Robert H. Gamble, comptroller of the State of Florida and ex-officio one of the Trustees of the Internal-Improvement Fund of the State of Florida, leave of this court having been first obtained therefor, respectfully shows to the said court that Attorney-General Emmons, a solicitor of this court, was the counsel representing this defendant as well as the other trustees, and that he instructed said solicitor to make for him a separate answer as in his, defendant's, opinion his defense could not be made out in a joint answer, as he based his defense and expected to show his justification for the most part by his opposition to the acts complained of his cotrustees.

The said solicitor agreed with him in opinion, and promised that such an answer should be filed, and that he, the said Emmons, would prepare and file the same, and he, the *the* said Emmons, then and there
431 took notes from which to prepare such answer, and further assured this defendant that his presence before the court would not be necessary, and this defendant not being familiar with legal proceed-

ings, believed that nothing more was necessary for him to do in the premises, and that his answer would be presented to the court in due time, as required by the rule; that neither Harrison Reed nor J. S. Adams had any authority to answer for this defendant nor to join him with themselves in their answer, and that the same was done without the authority or consent of this defendant, and until last night, when the matter was brought to his attention by the solicitor for complainant, Gen. Jackson, was he aware that any such joint answer was in existence; that as soon as this defendant was informed of the issuing of the attachment he started to repair to Jacksonville, but was informed that the court had adjourned, & that Judge Fraser had left Jacksonville. And now, by further leave of the court in this behalf obtained, in response to the rule hereintofore issued in said cause requiring him to show cause why he should not be attached for contempt of the order of injunction heretofore made herein, he answers and says:

That he was not a party, nor did he in anywise consent to the conveyance of lands made by his cotrustees to the Florida Improvement
432 company, but, on the contrary, when solicited to sign said conveyance he absolutely refused so to do; and the same was made and delivered without the signature, participation, or consent of this defendant. This defendant is informed and believes that said lands have, in pursuance of the *the* order of his honor, Judge Bradley, been reconveyed by the said Florida Improvement Company, though the reconveyance thereof has not come under personal notice or observation of this defendant.

Defendant further says that the conveyance of lands to the Southern Inland Navigation Company was also made without his consent, and when applied to and solicited to sign the same, this defendant positively refused so to do.

Defendant further says that as to the sale of any other lands since the issuing of said injunction for coupons, as charged to have been made, he knows nothing of the same: that if any sales of lands were made, as charged, for coupons, it was without his knowledge or consent; that this defendant inquired of the treasurer of the board in regard to the character of the funds received by him in payment for lands, and was assured by said treasurer that payment was made in money, and it was only upon such representations from the treasurer that this defendant consented to sign conveyances of trust-lands;
433 that this defendant could not personally examine such payment of funds made to the treasurer of the board, but has taken every reasonable precaution in his power to prevent the alienation of trust-lands for other consideration than money since the date of said injunction.

This defendant further says that the governor of the State of Florida, Harrison Reed, some time in the summer or fall of 1871, the precise date defendant is not able to give, contracted with Messrs. M. A. Williams and S. Swann, of Fernandina, to locate the unselected swamp lands in the State for a compensation of one acre in every fifty so located, to be paid them in what is known as floats; that this contract was made by the governor, under the power and authority vested in him by the first section of an act to secure the swamp and overflowed lands lately granted to the State, and for other purposes, approved Jan'y 23d, 1851.

That, by the second section of said act, it is provided that the expenses of examining and locating said lands shall be paid out of any monies received out of the sale of said lands; when informed of the

contract made by the governor as aforesaid, this defendant, feel-
434 ing that it was manifestly to the interest of the trust-fund that all the lands granted to the State should be selected, classified, & put upon the market, considering the matter, as under the law, within the prerogative of the executive, made no objection to the character or amount of compensation; but, afterwards, when applied to by the complainant to intervene in the matter, on the ground that the compensation given to said Williams & Swann was excessive, & should be paid from the lands by them located, and not from the trust-funds at large, this defendant did bring the matter to the attention of the board, and protested against the further execution by said Williams and Swann of their said contract, unless they should consent to take their compensation out of the lands actually located; that this defendant has no knowledge of any sales of land made by said Williams and Swann, except of the lands paid them under their said contract, and if any such sales were by them or charged, they were made without his knowledge, connivance, or consent.

That this defendant knows nothing of any coalition or partnership, as allegad, between said Williams and Swann and the treasurer and salesman of the board; but this defendant has been informed by
435 the treasurer, J. S. Adams, that no such connection has ever existed between them.

Defendant further says that if the treasurer of the board at any time during the year 1871, or subsequent thereto, exchanged non-tax-paying scrip for coupons to the amount of fifteen thousand dollars, or to any other amount, it was done without the knowledge or consent of the defendant. That no authority was given to said treasurer by the board at any meeting of said board at which this defendant was present to exchange non-tax-paying scrip for coupons; but this defendant is informed that such authority was granted by the board at a meeting held in Jacksonville, at which this defendant was not present.

This defendant further says that he has never seen the letter of Feb. 24, 1871, addressed by the complainant Vose to the treasurer, J. S. Adams, that he is aware of, nor was the same ever submitted by the said Adams at a meeting of the board, as he recollects.

This defendant further says that the sum of $55,000 referred to by complainant has not at any time been under the control of the present board of trustees; that said fund was deposited by the former board with Moses Taylor, of New York, and said Taylor has persistently
436 refused to permit the present board of trustees to have any control or direction of the same; and the said Taylor has refused to give to this defendant, as a member of the board, any information as to the amount or condition of the said fund. This defendant does not deny that money has been recovered from the Florida Railroad Company on the sinking fund. The exact amount this defendant cannot now state. But this defendant denies that said funds, or any part thereof, have ever been in any manner by him to his personal use or benefit, or with his consent prevented from their proper and legitimate use and purpose under the trust of which he is one of the custodians, except that he did consent to and urged the application of a portion of said fund, some $4,500 in all, to the relief of insane citizens of Florida who were being cared for in the asylum for the insane at Columbia, S. Ca., & for feeding the prisoners confined in the penitentiary at Chattahoochee.

That the prisoners were represented to be without food; the State authority of So. Ca. threatened to turn the Florida patients from the

hospital if not paid at once. Respondent concedes that this was a diversion of the fund, but says that his course in the matter was
437 dictated by feelings of humanity, & the State is bound to prepay to the board the advances thus made. This def't further says that he knows of no trust-fund taken by any member of the board and substituted with script except $1,140 paid for Reed by M. C. Roberts for the Florida R. R. Co., which said road appropriated, & afterwards paid into the treasury of the trust-fund in scrip.

(On the margin:) He also consented to the payment of three thousand dollars to Papy & Peeler.

This def't further says that he protested against the att'y-general of the State being retained to defend the board, & any and all moneys paid him for professional service in this behalf were paid under protest of this def't. That this def't did employ Cabell to represent the board at one time in New York, for which service the said Cabell was paid the sum of $100. This def't answering that the articles of agreement between his cotrustees & the J., P. & M. R. R. Co. were entered into with his knowledge or consent, but avers that he was at the time out of the State, & on his return protested against the same.

And this def't further says that he was not a party to the con-
438 sent decree referred to, but that as soon as he heard of the same he insisted that the same be set aside, & has used every means in his power to accomplish that object, & this def't protests against being in anywise bound by the consent on which said decree was made.

And this def't further says that he does not deny that the business of said board of trustees has been conducted in the loosest manner, as charged.

But he says that he has used all possible diligence, as one member of the board to prevent fraud & abuse of the funds, to have the business of the board conducted & the books kept in proper & regard & manner & form, and to discharge the high fiduciary powers reposed in him by his official position. That he has always protested against the combination of the offices of salesman and treasurer in the hands of one man as subversive of all checks & safeguards.

That many meetings of the board have been held at Jacksonville with & without notice to this def't, but this def't has used all diligence to post himself with regard to all action of the board, & protest against any acts done in his absence, which, in his opinion, were violation of the trust.

439 And this def't, having fully answered, asks to be discharged from the order attaching him for contempt.

FLEMING & DANIELS,
Sol's for R. H. Gamble.

440 STATE OF FLORIDA,
Duval County:

Before me, J. E. Townsend, clerk of the above court, personally appeared Robert H. Gamble, one of the defendants in the above-stated cause, who, being duly sworn, says he is acquainted with the contents of the foregoing answer, and that the allegations therein set forth, and the matters and things therein contained, are true in substance and in fact.

R. H. GAMBLE.

Sworn & subscribed before me this 18th Dec., 1872.

J. E. TOWNSEND, *Clk.*

(Indorsed:) Francis Vose vs. Harrison Reed et al., trustees, et al. Answer of R. H. Gamble. Filed Dec. 18, 1872. J. E. Townsend, cl'k.

441 UNITED STATES OF AMERICA,
Northern District of Florida:

Know all men by these presents, that we, Simon B. Conover, James W. Johnson, W. H. Christy, are held and firmly bound unto Sherman Conant, marshal of the United States for the northern district of Florida, and to his successors in office, in the sum of five thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly, jointly and severally, by these presents. Signed with our hands, and sealed with our seals, this the eighteenth day of December, A. D. 1872.

The condition of the foregoing obligation is such that, if the above-bounden Conover shall be and appear before the judges of the circuit court of the United States for the fifth circuit and northern district of Florida, at a court to be holden at the city of Jacksonville, within the northern district of Florida, on the first Monday in December, A. D. 1873, and shall answer unto said court touching a certain charge of contempt pending against him for having violated and disobeyed the injunction of said court, in a certain cause therein pending, in which Francis Vose is plaintiff, and Harrison Reed et als are defendants, and shall abide the order of said court, and not depart therefrom
442 without leave of said court; then this obligation shall be null and void, otherwise to remain in full force, virtue, and effect.

SIMON B. CONOVER. [SEAL.]
JAS. W. JOHNSON. [SEAL.]
W. H. CHRISTY. [SEAL.]

J. W. Johnson being duly sworn, makes oath that he is worth the sum of five thousand dollars, over and above all his just debts, liabilities, and exceptions.

J. W. JOHNSON.

Sworn and subscribed before me this the 18th day of December, A. D. 1872.

J. E. TOWNSEND, *Cl'k.*
Pr. PHILIP WALTER,
Dept. Cl'k.

W. H. Christy being duly sworn, makes oath that he is worth the sum of five thousand dollars, over and above all his just debts, liabilities, and exemptions.

W. H. CHRISTY.

Sworn to and subscribed this 18th day of December, 1872.

J. E. TOWNSEND, *Cl'k,*
Per. PHILIP WALTER,
Dep. Cl'k.

443 (Indorsed:) Francis Vose vs. Harrison Reed et als., trustees et al. Bond for appearance of Simon B. Conover. Filed Dec. 19, 1872. J. E. Townsend, cl'k.

444 In the fifth circuit court of the United States for the northern district of Florida. In equity.

To the honorable the judges of said circuit court, in equity, sitting at Jacksonville, in the State of Florida.

FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED, GOVERNOR, &C., ET AL.,
defendants.

The petition of defendants respectfully show that they find themselves aggrieved by the decree made by this honorable court at the present term in the above-entitled cause, whereby, among other things, it was "Ordered and decreed that the complainant, Francis Vose, is the holder of one hundred and ninety-five bonds on the Florida Railroad Company, issued under the provisions of the act of January 6th, 1855, entitled an act to provide for and encourage a liberal system of internal improvement in this State; and that there is now owing to him two hundred thousand dollars and upwards upon the coupons of
445 said bonds which have already fallen due. That Wm. H. Wagner is the owner of twelve bonds of the said Florida Railroad Company, and that there is now owing to him seven thousand four hundred and fifty-five dollars upon the coupons of said bonds which have already fallen due; that Frank H. Webster is the holder of four coupons, amounting to one hundred and forty dollars; that W. T. Webster is the holder of one coupon for thirty-five dollars; that S. J. Trumbull, trustee, is the holder of seven coupons calling for one hundred and ninety-nine dollars and fifty cents; that W. J. Hines, trustee, is the holder of thirty-two coupons calling for eight hundred and thirty-four dollars; that H. J. Tinlayson is the holder of eighteen coupons calling for six hundred and thirty dollars; all of said last-mentioned coupons being due and unpaid, and being coupons of bonds issued by the Pensacola and Georgia Railroad Company; that Y. A. Hulig is the holder of sixteen coupons of the bonds of the Florida, Atlantic & Gulf Central Railroad Company, calling for five hundred and sixty dollars; that W. S. Cowarden is the holder of fifteen coupons of bonds issued by the said Florida Railroad Company, and calling for five hundred and twenty-five dollars; J. J. McNish & Co. are the holders of five coupons of bonds issued by the Tallahassee Railroad Company
446 calling for thirty-five dollars, and nineteen coupons of the said Pensacola & Georgia Railroad Company calling for four hundred and sixty-nine dollars; all of which said last-named coupons are due and unpaid, and all of which bonds were issued under the provisions of the act of 1855.

"Secondly. It is further ordered and decreed that the securities belonging to the sinking fund provided by said act of 1855 and now held by A. Doggett, esq., receiver, be sold by him at public outcry in the city of Jacksonville, upon twenty days' notice to be given by publication through one newspaper in the said city of Jacksonville, and another in the city of Tallahassee, and that the proceeds of said sale be invested in the bonds so held by the said Francis Vose and the said W. H. Wagner in the proportion of one hundred and thirty-five to twelve.

"Thirdly. It is further ordered and decreed that the said receiver shall have power and authority to demand and receive all moneys which may be already due, or which may hereafter become due to

the said the Internal-Improvement Fund of Florida, whether by the purchasers and present owners of the railroads which have been sold under the provisions of the said act of 1855 or by any person
447 or body corporate, and that it shall be competent for him to make any person or body corporate whatever who shall contest the validity of any claim which he may assert by virtue of this decree a party defendant to this suit for the purpose of enforcing the collection of such claim should the same be adjudged valid, and whenever any moneys shall come into the hands of said receiver under the provisions of this clause of this decree, it shall be his duty, and he is hereby instructed and empowered, to invest the same in the bonds of the said railroad companies issued under the provisions of the said act of 1855 in manner and form and in the ratio set out in the second clause of this decree.

"Fourthly. It is ordered and decreed that this case be referred to A. Doggett, esq., master, &c., for further investigation, and report to this court, under the order of reference made at the last term, but more especially to call for and audit all coupons which may be held by persons asserting a lien for payment of the same against the said the Internal-Improvement Fund, the said master to give due notice to all parties in interest of the time and place when lists of coupons which may be submitted to him shall be open to investigation, allowing
448 to all such persons the opportunity to object to the certified approval of said master upon grounds to be stated in writing, requiring the production when necessary and called for of all coupons, the lien of which shall be thus contested, to hear the parties submitting and contesting the same, at least thirty days before the next term thereafter, and to report his decision thereon to this court, to which said decision either party may except, under the ordinary rules of chancery practice, and that no coupons shall be paid by the Trustees of the Internal-Improvement Fund except under the order of this court.

"Fifthly. It is further ordered and decreed that the injunction heretofore granted in this cause be continued in full force and effect and that the appointment of receiver hitherto made be continued for the purposes of that appointment." And your petitioners submit that so much of said decree is erroneous as directs that the securities belonging to the sinking fund provided by said act of 1855, and now held by A. Doggett, esq., receiver, be sold by him at public outcry in the city of Jacksonville, upon twenty days' notice, to be given by publication through one newspaper in the said city of Jacksonville and another in the city of Tallahassee, and that the proceeds of said sale be invested in
449 the bonds so held by the said Francis Vose and the said W. H. Wagner in the proportion of one hundred and thirty-five to twelve, because your petitioner show' unto your honors that the bill of complaint filed in said cause did not contain any allegation that the investment of the sinking fund in securities of the State of Florida was done by said trustees contrary to the law of the State, nor that the investment was valueless, nor that it was fraudulently made. Said bill does not aver that complainant had the right under the law of the State to have such investment changed as is directed by said clause of said decree, nor does said bill contain any prayer for relief in respect to such matter. Because by the terms of said clause of said decree, W. H. Wagner is secured an advantage and benefit by means of the provision which directs that a certain portion of the proceeds of sale of said securities is directed to be invested in bonds of the Florida Railroad of which said Wagner is in said decree alleged to be the owner, whereas it appears

from the pleadings in said cause that said Wagner is not a party thereto, is not named in the bill as a complainant, nor does it appear by
450 the record that he is competent to maintain his suit in this court, by reason of his citizenship being different from that of these defendants.

And your petitioners further humbly submit that so much of the other part of said decree is erroneous in law, whereby it is directed that the said receiver shall have power and authority to demand and receive all moneys which may be already due or which may hereafter become due to the said the Internal-Improvement Fund of Florida, whether by the purchasers and present owners of the railroads, which have been sold under the provisions of the said act of 1855, or by person or body corporate whatever, and that it shall be competent for him to make any person or body corporate who shall contest the validity of any claim which he may assert by virtue of this decree a party defendant to this suit for the purpose of enforcing the collection of such claim, should the same be adjudged valid, and whenever any moneys shall come into the hands of said receiver under the provisions of this clause of this decree it shall be his duty, and he is hereby instructed and empowered, to invest the same in the bonds of the said railroad companies
451 issued under the provisions of the said act of 1855 in manner and form and in the ratio set out in the second clause of this decree. Because by the terms of said clause of said decree it is directed that the funds now belonging or which may hereafter become due to the said fund shall be taken into possession and invested by said receiver in the bonds of the said Florida Railroad only, which are owned by said complainant and said W. H. Wagner, the execution of which directions and orders makes void the authority of and prevents the performance of the duties by the officers of the State, confer'ed on them by the said internal-improvement act, without any provisions being made by said decree for a restoration to the successors of the present incumbents of such authority or exercise of such duties & powers as are by said law annexed to such officers in respect to said Internal-Improvement Fund, which future officers are thereby condemned to deprivation of official rights and the State of Florida injured, without any opportunity for defense having been accorded to such officers of said State. And said clause of said decree is also erroneous because the same
452 does not conform in this respect to the allegations of the bill and is not in accordance with the relief therein prayed. It appearing from said bill that the suit of the complainant was a "quia timet" proceeding to prevent waste and injury to the fund and by injunction to restrain the officers made defendants in the suit from illegal conduct of the duties annexed to their officers in relation to said fund.

And said clause is also erroneous, because, as appears from the bill, and evidence there, and persons who are not made parties to the suit, who are interested in the subjects disposed of by said decree, which parties are the Florida Railroad Company, the Tallahassee Railroad Company & its successor, the Jacksonville, Pensacola, and Mobile Railroad Company, Frank W. Webster, E. M. L'Engle, agent & ex'r; W. T. Webster, S. J. Trumbull, trustee; W. J. Hines, trustee; A. F. Tinlayson, Y. A. Hulig, W. J. Cowardin, J. J. McNish & Com-
453 pany, which latter persons are holders of bonds and coupons issued by the railroads of the State under the provisions of the said internal-improvement act, and are therefore a charge on said fund.

And said decree is otherwise irregular and erroneous on the face thereof, because it contains directions for the future conduct and management of said Internal-Improvement Fund, which violates the provisions of the law of said State by which the same was created, and its management, and the application of the proceeds of the sale of the lands of which said fund is by such law constituted.

Whereupon your petitioners humbly pray that your honors will be pleased to vouchsafe a rehearing of this cause before your honors, your petitioners submitting to pay such cost as the court shall award in case their complaint shall be found groundless.

And your petitioners will ever pray, &c.

454 Dated the 30th day of January, 1873.

J. P. C. EMMONS,
Solicitor for Defts.

W. G. M. DAVIS,
Counsel for Def'ts.

We certify that we have perused the foregoing petition, and are of the opinion that a rehearing ought to be granted, as thereby prayed for.

Dated the 3d day of January, 1873.

W. G. M. DAVIS,
JAS. M. BAKER,
Counsel.

455 (Indorsed:) In the fifth circuit court of the United States for the northern district of Florida. Francis Vose, complainant, vs. Harrison Reed, gov', et als., defendants. Petition for a rehearing. Filed Jan'y 6th, 1873. J. E. Townsend, cl'k.

456 In the fifth circuit court of the United States for the northern district of Florida. In equity.

FRANCIS VOSE, COMPLAINANT,
versus
HARRISON REED, GOVERNOR OF THE STATE of Florida, & others, defendants.

I, P. C. Emmons, attorney-general of the State of Florida, and ex-officio a trustee of the internal-improvement fund, &c., &c., in his own behalf & that of his co-trustees, defendants in the above-stated case, now on this second day of January, in open court, before the honorable Philip Frasier, in said court setting, prays an appeal from the final decree made at the hearing of said cause, before the honorable W. B. Woods, then sitting in said court, on the eighteenth day of December, 1872, during the present term of this court, and the said appellant prays that their said appeal may operate as a supersedeas of the said final judgment and decree, and tendered themselves ready to enter into bond and surety on such appeal in manner as the statute in such cases provides, and they pray that the amount of such bond may be

457 fixed by this honorable court, after examination of the provisions and terms of said decree.

J. P. C. EMMONS,
Attorney-General for the State of Florida.

458 (Indorsed:) In the U. S. circuit court northern district of Fla. In equity. Francis Vose vs. Harrison Reed, governor, &c., et als. Petition for appeal & supersedeas. Filed Jan'y 10, 1873. J. E. Townsend, cl'k.

459 U. S. circuit court, northern district of Florida.

FRANCIS VOSE
vs.
HARRISON REED AND OTHERS, TRUSTEES OF the Internal-Improvement Fund of Florida.

The attorney of the above-named defendants will take notice that on Monday, the 13th inst., at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the plaintiff, by his attorneys, will move the court to esscind and set aside the order made on the 10th inst. granting an appeal herein, on the ground that the decree appealed from is not a final decree, and is not appealable under the laws of Congress and the usages and practice of the courts of the United States.

Jan'y 10th, 1873.

JACKSON, LAWTON & BASSINGER,
Atty's for Plaintiffs.

By I. I. FINLEY.

460 Executed the within by delivering a true copy of the same to the plaintiff' attorney this the 10th day of Jan'y, A. D. 1872.

S. CONANT, *U. S. Marshal.*
By THO'S McMURRAY, *Deputy.*

(Indorsed:) Circuit ct. U. States, northern dist. of Florida. Francis Vose vs. Harrison Reed & others, Trustees of the Internal-Improvement Fund of Fla. Filed January 13th, 1873. J. E. Townsend, cl'k. Jackson, Lawton & Bassinger, att'y' for pl'ff.

461 NORTHERN DISTRICT OF FLORIDA:

Know all men by these presents that we, Harrison Reed, as principal, and Halstead H. Hoeg and Calvin L. Robinson, sureties, are held and firmly bound unto Sherman Conant, marshal of the United States for the northern district of Florida, and to his successors in office, in the sum of five thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly, jointly and severally, by these presents, signed with our hands and sealed with our seal this 14th day of January, A. D. 1873.

The condition of the foregoing obligation is such that if the above-bounden Harrison Reed shall be and appear before the judge of the circuit court of the United States for the fifth circuit and northern district of Florida, at a court to be holden at the city of Jacksonville, within said northern district of Florida, on the first Monday of December, A. D. 1873, and shall answer unto said court touching a certain charge of contempt pending against him for having violated and disobeyed the injunction of said court in a certain cause therein pending in which Francis Vose is plaintiff and Harrison Reed et al. are defendants, and shall abide the order of said court, and not depart therefrom without

462 leave of the said court, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands and seals the day and year above written.

HARRISON REED. [SEAL.]
H. H. HOEG. [SEAL.]
C. L. ROBINSON. [SEAL.]

Taken and acknowledged before me this 18th Feb'y, 1873.

JOSEPH H. DURKEE,
U. S. Commissioner.

NORTHERN DISTRICT OF FLORIDA:

Before me, J. H. Durkee, U. S. commissioner, personally came Halstead H. Hoeg, surety on the above bond; being duly sworn, says that they are each worth the sum of ten thousand dollars over and above the just debts, liabilities, and exemptions constitutional.

H. H. HOEG.

Subscribed & sworn to as true in substance and in fact this 18 Feb'y, 1873.

JOSEPH H. DURKEE,
U. S. Commissioner, N. Dist. Fla.

(Indorsed:) Filed Feb'y 27, 1873. J. E. Townsend, cl'k.

463 In the fifth circuit court of the United States for the northern district of Florida.

To the judge of the United States circuit court for the northern district of Florida:

Francis Vose, a resident and citizen of the State of New York, brings this his supplemental bill of co..plaint, against Ossian B. Hart, who is the governor of the State of Florida; Clayton A. Cowgill, who is the comptroller of public accounts of said State; Charles H. Foster, who is the State treasurer of said State; William Archer Cocke, who is the attorney-general of said State, and Dennis Eagan, who is the commissioner of lands and immigration of said State, who are citizens and residents of the said State of Florida and the northern district thereof.

And therefore your orator complains and says that on the first day November, A. D. 1870, he filed his original bill of complaint in this honorable court against Harrison Reed and others, The Trustees of the Internal-Improvement Fund of Florida, and others, a copy of which is hereto annexed, and which your orator prays may be taken as here incorporated into this his supplemental bill, and be taken as part and parcel of the same without further express repetition of any of the allegations therein contained.

That the said original bill was filed against the said trustees
464 as a corporation under the name of the Trustees of The Internal-Improvement Fund of the State of Florida.

That in the charging part of said bill it is alleged that the said trustees "at times pretend that many of the misapplications of the funds and misappropriations and wastings of the lands belonging to their trust which are hereinbefore set out, resulted from the act of their predecessors, for which they are in no wise accountable, whereas your orator charges that under said act of January 6th, 1855, the said trustees constitute a corporation; that by succession they are in their coporate

capacity accountable for the acts of said corparation, and that the trust-funds in their hands are equitable assets to meet the just claims of your orator, based upon acts of corporate misfeasance or nonfeasance at any time occurring; but your orator admits that the individual members of said corporation, by violation of their trust, may have rendered themselves also personally liable in damages to him, and he has accordingly made some of the predecessors of the said the trustees parties defendant to this bill, for the purpose of praying a deeree to that effect against them."

That in response to the prayer of said bill, on the sixth day of December, in the year aforesaid, his honor Judge Woods, granted
465 his injunction, directed to the said Harrison Reed and others, The Trustees of the Internal-Improvement Fund of Florida, and to their successors, strictly enjoining and commanding them, the said the trustees and their successors from selling and disposing of the lands belonging to that trust and from receiving payment for the same in the manner complained of in the said original bill, all of which will more fully appear by reference to a copy of said injunction, which is hereto annexed and marked "Exhibit B."

That the said the trustees, having filed their answer to the said bill, moved, on the 18th day of May, A. D. 1871, before his honor, Justice Bradley, to dissolve the said injunction, but the said motion was refused and the said injunction, in its original form, still continues in force.

That on the first day of June, A. D. 1872, upon the petition of your orator that a receiver might be appointed, with full power and authority to demand and receive from the said trustees all the monies and securities belonging to the said trust fund, his honor Judge Fraser, rendered his decree, appointing Aristides Doggett to be such receiver, and required the said the trustees to turn over and to pay to him all the securities and moneys which might then be in their hands, or might thereafter come into their hands, appertaining to the said trust.

466 That on the eighteenth day of December, of the year last aforesaid, the said cause of your orator against the said the trustees came on to be heard before his honor Judge Woods, on the said original bill, and answers, and testimony taken before the examiner, and report made by the master, and it was ordered and decreed, among other things, that the said appointment of the said receiver should be continued for the specified ends and for others which are therein set out, all of which will more fully appear from the said decrees, copies of which are hereto annexed, marked Exhibits C and D, to which your orator prays the usual liberty of reference.

And your orator further shows that since the rendition of the said decrees, the said Harrison Reed and others have passed from the public offices, through the holding of which they became, under the provisions of said act of January 6, 1855, The Trnstees of the Internal-Improvement Fund of Florida, and that the said Hart, Cowgill, Foster, Cocke and H. A. Corley are their successors in office, and ex-officio their successors in the said trust. That, as such successors, it became their duty to obey the said injunctional order and the said decrees which had been rendered against the said The Trustees of the Internal-Improve-
467 ment Fund of Florida, which order and decrees related to them as well as to their predecessors; and your orator had well hoped that they would have given such obedience as in justice and equity they ought to have done.

But now so it is may it please your honors, that the said defendants

refuse to obey the said order and decrees of this honorable court, or to recognize that they (the said order and decrees), are in any wise applicable to them.

To the end, therefore, that the said defendants may answer the premises, and that the said injunctional order and the said decrees may be enforced against them, and that your orator may have such other and further relief as he might have had against the said Harrison Reed and others, and as to your honors may seem to be just and proper, may it please your honors to grant to your orator the writ of subpœna, to be directed to the said Ossian B. Hart, Clayton A. Cowgill, Charles H. Foster, William Archer Cocke, and Dennis Eagan, thereby commanding them, and every of them at a certain day, and under a certain pain therein to be specified, personally to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein, as to this court shall seem meet.

JACKSON, LAWTON & BASSINGER,
Compl't's Sol.

(Indorsed: In the United States circuit court for the northern district of Florida. Francis Vose, complainant, and Ossian B. Hart et al., Trustees of the Internal-Improvement Fund, of the State of Florida, defendants. Supplemental bill. Filed April 2nd, 1873. J. E. Townsend, cl'k. Jackson, Lawton & Bassinger, complainant's sol.

468 The President of the United States of America to Charles H. Foster, treasurer of the State of Florida, a citizen and resident of the State of Florida, greeting:

You are hereby commanded and strictly enjoined that, laying aside all business, and notwithstanding any excuse, that you be and appear before the judge of the circuit court of the United States, 5th circuit, and northern district of Florida, on the first Monday in May, being the fifth day thereof next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis Vose, a citizen and resident of the State of New York, and to do further and receive what said court shall have considered in that behalf, and this you are not to omit under a penalty upon you of one thousand dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of this court, this 2d day of April, A. D. one thousand eight hundred and seventy-three.

[SEAL.] J. E. TOWNSEND, *Cl'k.*

The defendant is required to enter his appearance to this writ on or before the return day thereof; in default, a decree pro confesso will be taken against him.

J. E. TOWNSEND, *Cl'k.*

469 TALLAHASSEE, FLORIDA.

Executed the within subpœna by reading the same to C. H. Foster, treasurer of the State of Florida, this the 6th day of April, 1873.

SHERMAN CONANT,
U. S. Marshal.
Per S. L. TIBBITTS, *Deputy.*

(Indorsed:) No. 2. C. H. Foster. In the United States cir. c't, 5th

circuit, northern district of Florida. Francis Vose, complainant, vs. Ossian B. Hart et al., Trustees of the Internal-Improvement Fund of the State of Florida, defendants. Subpœna in chancery, issued 2d April, 1873, returnable 5th May, 1873. Returned & filed 21st April, 1873. J. E. Townsend, cl'k, Jackson, Lawton & Bassinger, complainant's solicitors.

470 The President of the United States of America to Clayton A. Cowgill, the comptroller of the State of Fla., a citizen and resident of the State of Florida, greeting:

You are hereby commanded and strictly enjoined that, laying aside all business, and notwithstanding any excuse, that you be and appear before the judge of the circuit court of the United States, 5th circuit and northern district of Florida, on the first Monday in May, being the fifth day thereof next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis Vose, a citizen and resident of the State of New York, and to do further and receive what said court shall have considered in that behalf; and this you are not to omit, under a penalty upon you of one thousand dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of said court this 2d day of April, A. D. one thousand eight hundred and seventy-three.

[SEAL.] J. E. TOWNSEND, *Clk.*

The defendant is required to enter his appearance to this writ on or before the return day thereof; in default a decree pro confesso will be taken against him.

J. E. TOWNSEND, *Clk.*

471 Served the within writ of subpœna by reading the same to C. A. Cowgill, comptroller of the State of Florida, this the 3d April, 1873, at Jacksonville, within the northern dist of Fla.

S. CONANT,
U. S. Marshal.

Service, 2.00.

(Indorsed:) No. 2. Cowgill. In the United States cir. c't, 5th circuit, northern dist. of Florida. Francis Vose, complainant, vs. Ossian B. Hart et al., Trustees of the Internal-Improvement of the State of Florida, defendants. Subpœna in chancery. Issued 2d April, 1873, returnable 5th May, 1873. Returned & filed 21st April, 1873. J. E. Townsend, cl'k. Jackson, Lawton & Bassinger, complainant's solicitors.

472 The President of the United States of America to Ossian B. Hart, governor of the State of Florida, a citizen and resident of the State of Florida, greeting:

You are hereby commanded, and strictly enjoined that laying aside all business, and notwithstanding any excuse, that you be and appear before the judge of the circuit court of the United States, 5th circuit and northern district of Florida, on the first Monday in May, being the fifth day thereof next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis Vose, a citizen and resident of the State of New York, and to do further and receive what said court shall have considered in that behalf, and this

you are not to omit under a penalty upon you of one thousand dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of said court, this 2d day of April, A. D. one thousand eight hundred and seventy-three.

[SEAL.] J. E. TOWNSEND, *Clk.*

The defendant is required to enter his appearance to this writ on or before the return day thereof; in default a decree pro confesso will be taken against him.

J. E. TOWNSEND, *Clk.*

473 Served as a true copy of the within writ of subpœna upon O. B. Hart, governor of the State of Florida, at Jacksonville, within the northern dist. of Fla., this the 8th day of April, 1873.

Service, 2.00.

S. CONANT,
U. S. Marshal,
By THOS. McMURRAY,
Deputy.

(Indorsed:) No. 2. Hart, gov. In the United States cir. c't. 5th circuit, north. dist. of Florida. Francis Vose, complainant, vs. Ossian B. Hart et al., Trustees of the Internal-Improvement of the State of Florida, defendants. Subpœna in chancery. Issued 2d April, 1873. Returnable 5th May, 1873. Returned & filed 21st April, 1873. J. E. Townsend, cl'k. Jackson, Lawton, & Bassinger, complainant's solicitor.

474 The President of the United States of America to Dennis Eagan, commissioner of lands and immigration of the State of Florida, a citizen and resident of the State of Florida, greeting:

You are hereby commanded, and strictly enjoined, that laying aside all business, and notwithstanding any excuse that you be and appear before the judge of the circuit court of the United States, 5th circuit and northern district of Florida, on the first Monday in May, being the fifth day thereof next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis Vose, a citizen and resident of the State of New York, and to do further and receive what said court shall have considered in that behalf, and this you are not to omit under a penalty upon you of one thousand dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of said court this 2d day of April, A. D. one thousand eight hundred and seventy-three.

[SEAL.] J. E. TOWNSEND, *Clk.*

The defendant is required to enter his appearance on or before the return day of this court; in default thereof a decree pro confesso will be taken against him.

April 2d, 1873.

J. E. TOWNSEND, *Clk.*

475 Executed the within subpœna by reading the same to Dennis

Eagan, commissioner of lands and immigration of the State of Florida, at Tallahassee, Florida, this the 6th day of April, A. D. 1873.

SHERMAN CONANT,
U. S. Marshal,
Per S. L. TIBBITTS, *Deputy*.

(Indorsed:) No. 2. D. Eagan. In the United States cir. c't, 5th circuit, northern district of Florida. Francis Vose vs. Ossian B. Hart et al., Trustees of the Internal-Improvement Fund of the State of Florida, defendants. Subpœna in chancery. Issued 2' April, 1873. Returnable 5' May, 1873. Returned & filed 21' April, 1873. J. E. Townsend, cl'k. Jackson, Lawton & Bassinger, complainant's solicitors.

476 The President of the United States of America to Ossian B. Hart, as president of the Board of Trustees of the Internal-Improvement Fund of Florida, a citizen and resident of the State of Florida, greeting:

You are hereby commanded, and strictly enjoined, that laying aside all business, and notwithstanding any excuse, that you be and appear before the judge of the circuit court of the United States, 5th circuit and northern district of Florida, on the first Monday in May, being the fifth day thereof next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis Vose, a citizen and resident of the State of New York, and to do further and receive what said court shall have considered in that behalf, and this you are not to omit under penalty upon you of one thousand dollars.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of said court, this 2d day of April, A. D. one thousand eight hundred and seventy-three.

[SEAL.] J. E. TOWNSEND, *Cl'k*.

The defendant is required to enter his appearance to this writ on or before the return day thereof, in default thereof a decree pro confesso will be taken against him.

J. E. TOWNSEND, *Cl'k*.

477 Served a true copy of the within writ of subpœna upon O. B. Hart, prest., &c., at Jacksonville, within the north. dist. of Fla., this the 8th day of April, 1873.

Service, 2.00.

S. CONANT, *U. S. Marshal*,
By THOS. M. MURRAY, *Deputy*.

(Indorsed:) No. 2. Hart, prest. In the United States circuit court, 5th circuit, northern district of Florida.. Francis Vose, complainant, vs. Ossian B. Hart, et al., Trustees of the Internal-Improvement Fund of the State of Florida. Subpœna in chancery. Issued 2d April, 1873. Returnable 5' May, 1873. Returned and filed 21' April, 1873. J. E. Townsend, cl'k. Jackson, Lawton & Bassinger, complainant's solicitors.

478 The President of the United States of America to William Archer Cocke, attorney-general of the State of Florida, a citizen and resident of the State of Florida, greeting:

You are hereby commanded, and strictly enjoined, that laying aside all business, and notwithstanding any excuse, that you be and appear before the judge of the circuit court of the United States, 5th circuit

and northern district of Florida, on the first Monday in May, being the fifth day thereof next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis Vose, a citizen and resident of the State of New York, and to do further and receive what said court shall have considered in that behalf, and this you are not to omit under a penalty upon you of one thousand dollars.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of said court, this 2nd day of April, A. D. one thousand eight hundred and seventy-three.

[SEAL.] J. E. TOWNSEND, *Clk.*

The defendant is required to enter his appearance to this writ on or before the return day thereof; in default a decree pro confesso will be taken against him. J. E. TOWNSEND, *Clk.*

479 Served a true copy of the within writ of subpœna upon Wm. Archer Cocke, att'y-gen'l of the State of Florida, at Jacksonville, within the State of Florida, this the 4th April, 1873.

Service, 2.00. S. CONANT,
U. S. Marshal.

(Indorsed:) No. 2. In the United States cir. ct., 5th circuit, northern district of Florida. Francis Vose, complainant, vs. Ossian B. Hart, et al., Trustees of the Internal-Improvement Fund of the State of Florida, defendants. Subpœna in chancery, issued 2nd April, 1873. Returnable 5th May, 1873. Returned and filed 21st April, 1873. J. E. Townsend, cl'k. Jackson, Lawton & Bassinger, complainant's solicitors.

480 In the fifth circuit court of the United States for the northern district of Florida.

To the judges of the United States circuit court for the northern district of Florida:

FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES OF THE Int. Imp. Fund.

The joint and several answer of O. B. Hart, as gov. of the State of Florida, and Trustee of the Internal-Improvement Fund of the State of Florida; of C. A Cowgill, comptroller of the State of Florida, and as such also Trustee of the said Internal-Improvement Fund of the said State, and of C. H. Foster, treasurer of the said State; W. A. Cocke, attorney-general of said State, and of Dennis Eagan, commissioner of lands and immigration of said State; and as such, each being ex-officio, also Trustees of the said Internal-Improvement Fund, to an amended bill filed against them as Trustees of the said Internal-Improvement Fund of the State of Florida, by the said Francis Vose.

These defendants, now and at all times hereafter, saving and using unto themselves all benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and imperfections in said complainant's said bill of complaint and amended bill of com-

481 plaint contained, for answer that unto, or unto as much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, answering, say:

1. That it is true they are ex-officio Trustees of the Internal-Improvement Fund of the State of Florida.

2. That they became trustees as aforesaid in the following manner: The defendant, O. B. Hart, by virtue of his election and qualification as governor of the said State of Florida, and the other defendants by virtue of their appointment and confirmation to the said offices, respectively, attached to their names as mentioned above, and in accordance with act of the assembly of Florida, approved June 6th, 1855, entitled "An act to provide for and encourage a liberal system of internal improvement *fund* in this State."

3. That as trustees aforesaid they ascertained, when assuming the duties appertaining to the said trust, that a suit had been instituted against Harrison Reed and other Trustees of the said Internal-Improvement Fund, who, as each were the predecessors of your present defendants, and that long before the functions and duties of Trustees of the said Internal-Improvement Fund had devolved upon these defendants a suit had been brought and a decree entered against the said Harrison Reed and others, defendants in said original bill.

482 4. That the trust has departed by law from the said original defendants.

5. That these defendants, to the said amended bill, further answering, say that they know nothing of the allegations in said bill of complaint against the original defendants, save that which is charged in said original bill, and from which alone they derive their information, but say that they, the present defendants, are in no manner connected with the said original defendants, nor with any act *ed* committed by them violative of the said trust or not, nor have they the most remote idea, wish, or intention to do, or consum'ate any act projected by the said original defendants as trustees aforesaid, nor is it the wish or purpose or intention of these defendants to violate the said act of January 6th, 1855.

6. That it has been the wish and purpose of these defendants, not only to carry out in good faith to the best of their understanding and capacity the principles and the letter of the said act of January 6th, 1855, but also in the case of Vose vs. Reed et al., trustees &c., to carry out to the best of their ability and judgment, the decree made by the Hon. W. B. Woods, U. S. C. judge for the 5th circuit, &c., pronounced on this day of 1872, against the original defendants in this case.

7. And these defendants, further answering, say that they have respected the decree of the said Hon. W. B. Woods, judge, &c., and

483 all other decrees pronounced in the said cause of Vose vs. Reed et al., trustees, &c., as will appear by their handing over the said tract funds coming to their possession to Aristides Doggett, receiver, &c., appointed by order of the said U. S. circuit court, with only the exception of a few small sums necessary to defray the expenses of said trust; and these defendants fully and emphatically deny, as charged in said amended bill, that they have discharged, or violated the said decree of the Hon. W. B. Woods, in any way, or that they refuse to obey it, as will appear by their monthly settlements with the said Aristides Doggett as receiver, &c.

8. And these defendants, further answering, say that they have committed no act nor violated any duty or law or decree in reference to the said trust, or in reference to the allegations and charges in the said

original bill contained, nor can the said charges or duties set forth in the said original bill be attached to these defendants in any way, as they had not assumed the duties of trustees when the said original bill was filed, and cannot be, as they are not in any way, connected with the acts and doing' of their predecessors.

9. And these defendants, further answering, showeth that by the act of the sixth of January, A. D. 1855, they are, as mem-
484 bers of the present State government, entrusted ex officio with the trust appertaining to the said Internal-Improvement Fund, and as such, and under the said act, that they have the full, entire, and exclusive control and management of said fund, but that under the present decree of the Hon. W. B. Woods, they are deprived of the control of the said fund, and the application of the proceeds thereof, by being agreed as they are now doing to pay over the same to Aristides Doggett, receiver aforesaid, which besides enhancing the expenses of said trust, embarresses the said defendants in the discharge of their duties as required by the said act of January 6th, 1873, reference to which is hereby made for the purpose of showing the various duties required by said act, which the said trustees say they cannot execute as long as the present decree stands between them and the full discharge of their duties as trustees.

10. That these defendants being the true legal custodians of the Internal-Improvement Fund and holding the trust as public officers of the government they should be permitted to discharge such duties as the law imposes on them without the intervention of a party *as ways* connected with the trust, especially should this be so with the present trustees, who deny violating the law or disobeying the order of
485 the court, and to this end as well as for the proper discharge of their duties under the law, they ask that the property of the said trust may be restored to them and their legal franchises left unimpaired either by modification of the said decree *only* its expenditures, and the discharge or the said Aristides Doggett, receiver, &c.

11. These defendants, further answering, say that whilst it may have been right and proper that during the existence of the trust in the hands of officers who were charged with that malfeasan's and the improper *evidence* of the trust confided to them the court should have interposed for the protection of the rights of the plaintiff against the alleged improper acts; yet these respondents insist that such action should only be temporary and consistent with the official terms of the officers charged with the same duties, against whose purposes and actions no just ground of charge exists, they should be permitted to enter upon the discharge of their official duties by the restoration of the trust to them in full operation and control as it is only by this means that the full purpose and intent of the law can be fully carried out; that the Trustees of the Internal-Improvement Fund are not a corporation, nor can the present trustees be looked upon as having any
486 corporate connection with the original defendants; that the law contemplated that the trust should be vested in certain officers of the State government who are responsible only for their own acts and not for the acts of their predecessors; and as officers of the government these respondents insist most respectively that they ought not to be deprived of the service of their legal rights, let the acts of their predecessors be what they may, and that the legal duties required to be performed by statute of members of the government cannot be transferred to others or performed by any person except the government officers

lowed (as the other defendants had) to show cause why writ of attachment should not issue against him, with such other facts as are set forth in the affidavit hereinafter referred to. Whereupon Judge Frazer, admitting that he, the said Webster, was entitled to service of complaint, and an opportunity to show cause why writ should not issue against him, informed him that he would have an opportunity to appear be-
493 fore him (Judge F.) in Jacksonville, on the 15th Oct., and present his case, and that if injustice had been done him, it should be rectified.

Your petitioner then (Sept. 16th, 1872) called on Hon. J. P. C. Emmons, then at Port Huron, Mich., and requested him to appear for him Oct. 15th. Mr. Emmons expressed the opinion that there would be no difficulty in securing his, the said Webster's release from his obligation to appear on the 1st Monday in Dec., and advised him to prepare a statement which he (Emmons) promised to present to Judge Frazer.

Your petitioner, on or about Sept. 18th, prepared and forwarded to Mr. Emmons a statement, duly subscribed and sworn to, of which a copy is hereto annexed and marked A. On or about Oct. 8th, in answer to a telegram asking when Mr. Emmons would leave for Florida, your petitioner rec'd answer that he intended to leave the next Saturday; since which time he has heard nothing from the said Emmons (except a newspaper report of his total blindness). On or about Oct. 12th your petitioner fearing that Mr. Emmons would not return to Florida in season, sent to Judge Frazer (at Jacksonville, Fla.) a copy (sworn to and subscribed) of the statement above mentioned, and also about the same time a copy to Hon. J. S. Adams, requesting the latter that he would
494 see Judge Frazer and attend to the matter. In the latter part of Nov., 1872, your petitioner rec'd a letter from Mr. Adams in which he expressed the opinion that he should not have any trouble about the matter of release, and advising him to make a statement covering the acts alleged to be in violation of the injunction. This your petitioner was unable to do, further than he had already done, not having reliable and definite information (as above stated), as to that to which he was to make answer. Nov. 25th your petitioner started for Florida with intent to appear in court on the first Monday in December. He at the same time telegraphed to Hon. J. S. Adams in these words: "Must I be in Florida Dec. 2d?" On arrival at Chicago, he rec'd answer in these words: "I think not." Not being satisfied with this, he telegraphed again to Mr. Adams: "Must know positively at once. See Judge Frazer. Don't delay;" and to Judge Frazer, "Must I appear next Monday? Release me, if possible."

Not having time for further delay, he continued on his way towards Florida, purchasing a through ticket to Jacksonville, and having arranged that any telegram which might come to Chicago for him should follow him. At Indianapolis he rec'd a telegram from Mr. Adams in these words: "Sent answer. No. Trial will be continued,
495 settled, or decree." Your petitioner supposed, of course, that this answer was sent by authority of Judge Frazer, and had no thought but that he was fully justified in returning home, which he did. He is now informed by a paragraph in the Tallahassee Sentinel that his bond was declared forfeited on account of his non-appearance. This, he respectfully submits, is a great injustice to himself and his bondsmen. He has avoided no responsibility nor duty; but has endeavored to conform scrupulously to every requirement of law, and fully intended to appear in court on the first Monday in December, and there make such answer as he could, ignorant as he was and is of that

whereto he was to make answer, and would have done so, but that he supposed himself authoritatively released; and he is now prepared to appear and to give bonds to appear whenever required to do so. Your petitioner therefor' asks that the order making forfeit his bond be rescinded, and that if he be still required to make answer to the charge of contempt, he may be accorded that right which is not denied the lowest criminal, viz., specific information of the charge whereto he is to plead.

FRANK W. WEBSTER.

Sworn & subscribed before me this 28th day of Jan'y, A. D. 1873.

T. C. POOR,
Notary Public, Manitowoc Co., Wis.

496 A.

To Hon. Philip Frazer, judge of U. S. district court for northern district of Florida:

The undersigned, Frank W. Webster, of Menasha, Wis., a late surveyor-general of Florida, respectfully represents that he is under bonds to appear before you on the first Monday in December next, to answer to the charge of contempt of court, in that, as a member of the Board of Trustees I. I. Fund of Fla., he, as is alleged, violated an injunctional order of your honorable court, addressed to said board, and issued some time in December, 1869, in the suit of F. Vose against said board.

That he has never seen a copy of the complaint in which the said violation of injunction and contempt of court is alleged. That he was not, as he understands is customary and requisite, and as were done in the cases of the other defendants in said suit, summoned to show cause why writ of attachment should not issue against him.

That his only information of the charge against him is the order of the court for his arrest, except such information as he has obtained from unofficial newspaper reports, upon which he cannot base an answer, as they are too meagre and unreliable.

497 That learning from your honor that he could appear before you by attorney, on the 15th October, for the purpose of obtaining relief from arrest, he has strenuously endeavored to obtain copies of such papers and such information in the case as would enable him to make answer to the charge of contempt of court.

That he has been unable to obtain such papers and information, owing to the long time required for communications between this, his present residence, and Florida.

That he is, however, confident that he is not answerable to the charge of violation of said information and consequent contempt of court, for the reasons that he sought carefully to avoid any act which could be considered in violation of said injunction, keeping the same in view in all his acts as member of said board of trustees.

Shortly after the issue of said injunction, viz., June 26th, 1870*, he left the State of Florida on account of the illness of his wife, and remained absent for the same reason until about April 5th, 1870*. April 5th, 1870,* he ceased to a member of said board of trustees, by the operation of an amendment to the constitution of Florida, which united his office, that of surveyor-general, with that of commissioner of immigration. Ac-

*Corrected by letters to Judge Frazer and Mr. Adams.

cording to his present recollection he did not attend a meeting
498 of the board of trustees after the said injunction was issued.

He further represents that to appear in person before your honor on the 1st Monday of Dec. next, will impose on him a very heavy expense. It will seriously interfere with his duties as sec'y and land agent of the Wis. Con. R. R. Co., which offices he now holds, and that to be absent from his wife at that time will imperil her life, as she is in delicate health, and will then be near her confinement.

For the above reasons and not with any intent or desire to escape responsibility as member of the said board of trustees, he prays that he be either released from the order to appear before your honor on the 2d Monday in Dec. next, or that he be allowed to appear by attorney, and be furnished with official and specific information of the charge to which he is required to make answer.

FRANK W. WEBSTER.

(Indorsed:) Francis Vose vs. Harrison Reed et al., trustees, &c. Answer of Frank W. Webster. Filed this 11th day of Dec., 1873. J. E. Townsend, cl'k, per Philip Walter, dep. cl'k.

499 In the U. S. circuit court for the northern district of Florida.

FRANCIS VOSE, COMPLAINANT,
and
HARRISON REED, ET AL' TRUSTEES OF INTERNAL-IMPROVEMENT FUND OF FLORIDA, ET AL.

The answer of Simon B. Conover, treasurer of the State of Florida and ex-officio trustee of the Internal-Improvement Fund of said State to the rule heretofore issued in the above case upon the petition of complainant, filed April 22nd, 1872.

Respondent, answering, denies that he has intentionally violated any of the orders of the injunction or any other order heretofore made in this cause, or that he has sought in any way to avoid compliance therewith, but has endeavored to give an honest and an entire obedience to such mandates of the court, according to the best of his knowledge of what were thereby ordered, to the best of his ability and judgment. Respondent denies positively all the charges in said petition generally set forth as to the management of the said Internal-Improvement Fund, and the application of the
500 monies and property to it belonging, or that he has been guilty of any fraud or misconduct, or made any improper application to his own use or to the use of others, or made any improper disposition of said property for the benefit of any other person that has been by said complainant charged.

Respondent, further answering specifically to matters charged in said petition, says that it is untrue, as alleged, that any transaction with the Southern Inland Navigation Company, or W. H. Gleason, took place in the month of June, 1861, or after 18th day of May of that year, but that the deed was executed by the trustees, except R. H. Gamble, by which the contract which had been entered into between said company & the trustees prior to the filing of complainant's bill, to wit, on the 10th day of February, 1874, which deed was on said date delivered, the doing of which was not deemed by the trustee as a violation of the first order of injunction made in this cause, in which opinion

respondent has confirmed by the fact that nothing has been done in this cause at the instance of complainant or the court itself to have such contract set aside as was sought to be done in the matter of the Florida Improvement Company.

501 Respondent further says that Swann & Williams were appointed agents of the board for the location and selection of lands to which were entitled by acts of Congress, at a rate of compensation believed to be fair and not excessive; that the mode of payment was two (2) cents per acre, payable in cash or land; payment in cash became impossible, owing to the condition; and the pay in land was, in the judgement of the trustees, most beneficial to the fund; that the trustees received the orders of Williams & Swann to the extent they become entitled, as far as they desired to draw in payment for purchases of land at the rate agreed on, at which they were to take land, viz., one dollar per acre. The trustees, believing that the procuring of purchasers for lands was an advantage to the fund, that in employing said agents to perform such duties, the trustees followed the same line of conduct that was *perused* by the first bo*nd* of trustees and which had become the settled policy of the State; that it is true that Williams & Swann have received, according to the terms of said contract, the sum of dollars, by means of land sales made as before stated; what is the amount still due them respondent is

502 unable to state, but thinks the same will appear in the answer of the corespondent; that it is untrue that the labor rendered by said firm is nominal. On the contrary, the work performed by them is one requiring still and experience as land-surveyors, coupled with a knowledge of the law and practice governing the land offices of the United States, acquaintance of the topography of the State of Florida, and compelling them personally to inspect the lands selected, ascertain the boundaries, and make such fi*l*ed notes, maps, & plats as would authorize the officers of the United States land department to determine whether the selections made did or not fall within the grant made to the State, and on approval to sever the same from the national domain, until which no title could vest in the State. It is true that said Williams had been previously engaged as a surveyor in the employ of the United States to make surveys of lands in Florida; if the knowledge he had acquired of the Florida lands whilst so employed, that specially commended him to the trustees as a fit person to select land. The first board of trustees who made extensive se-

503 lections acted on the same policy, and employed Messrs. Randolph and Wells, who had previously been United States surveyors.

Respondent says that he has no personal knowledge of the value of the land selected, nor does he know who it was that confessed to the complainant that they were worthless, nor can he undertake what may be their future value; that as to the swamp lands, it is the duty of the board to embrace all, good or bad, which can be brought within the terms of the grant; that the contract to pay the surveyors in kind, made it their interest to select the best lands, because all the United States lands in Florida are salable only to actual settlers. Respondent, however, believes that said Williams and Swann have faithfully performed their duty, which opinion he basis upon their well-known character for honesty and integrity. Respondent denies having any concern with said Williams & Swann; knows nothing about their business; that in making payment to said Williams & Swann in land they could not

reasonably demand that they should wait and be paid out of late selection of lands, because of the time that is necessar'y taken at the offices in Washington, D. C., before the State title is perfected
504 to enable the trustees to make sale. The said respondent is informed & believes that said Williams & Swann are compelled to spend a large amount of money in the performance of their contract. As to the exchange of non-tax-paying script in the year 1871, and the circumstances attending the same, your respondent says that he assented to such action as a member of the board of trustees, and he refers to the answer of his correspondent, J. S. Adams, wherein such transaction is fully explained and therefor given; respondent having read such statement, agrees therein and says, further, that the act was one of good policy, as he believes that it was not secret, fraudulent, or designed to create or to give *fraudulent*, nor did he believe that such action was a violation of the said injunction, he having no intention so to do.

That as to the sums of money in the petition stated to have passed into the sinking fund, respondent as to the larger sum, *respondent* has no other knowledge than that arrived at from the official documents of the State, from which it appears that said sum was placed by a former board of trustees in hands of Moses
505 E. Taylor in New York City; that the amount was tendered to said complainant by said board on terms which he declined and has ever since refused; that respondent demanded payment of said money from Taylor, who refused, alleging among other things the existence of such a state of thing' in Florida as required him to hold on to it, since when complainant instituted a suit in the Supreme Court in the city of New York, against said trustees, and others of a similar character with the present proceeding in this court, which suit an' attachment was issued and said fund in the hands of said Taylor put under the control of the said court in the city of New York, a transcript of the proceedings whereof is herewith filed and as a part of this answer. As to the sum of $8{,}560\frac{10}{100}$ dollars or thereabouts in said petition charged to have been received from said Florida Railroad Company, by this respondent and his co-trustees, he says he believes the amount there stated is about the sum which has been received from said company since July, 1868; that inasmuch as the trustees have been prevented by said complainant from procuring possession of the
506 said money in New York, respondent insist' that it is unfair on his part to throw the blame on the trustees for the failure to realize the speculation advantage which complainant inist' would have arisen to the fund had he succeeded in inducing the trustees to buy his Florida Railroad bonds at his price and instead of their market value, which investment if made would have a clear violation of their duty and that right respecting other bondholders which complainant insists the trustees are bound to observe in making an investment; the trustees purchased about three thousand dollars in the bonds of the State of Florday at 75 cent' per dollar, and invested one thousand in other securities of the State, while the disposal of the money was in my care as treasurer of the State; as to the remainder of the amount I have no personal knowledge of the precise disposition of the money, and refer for particulars to the answer of my corespondent, J. S. Adams, and to the books kept by the trustees. I know of no misapplication of any portion of said sum received from the Florida Railroad Company; that in dealing with the State of Florida, the finances of which were in a crippled condition, certain exchanged

507 of State script were made by the trustees with the State by which no loss occurred to the fund, the security being the same, any difference in the market value of the respective script being temporary, the State being bound alike for all. The trustees believed they were empowered by the law to consider the State the best security, and in *at* as officers officers of the State, it would be unwise and impolitic to depreciate the value of State securities by refusing to invest therein, and respondent denies that in so doing he did violate the rights of the complainant or the mandates of the court; and respondent denies the allegation of illegal and fraudulent exchanges of script, or the substitution hereof for money collected by individual members of the board for their own profits. Reasonable fees have been paid to counsel in this and other suits, because in the opinion of the board, in view of the great importance of the litigation, the opposing array of counsels in this and other suits, it is necessary to do so and within their legal power; that among other sums which complainant has forced the trustees to pay to counsel to resist pretensions which they were advised were un-
508 founded in law, is the sum of about $2,000.00 *dollars* paid out of the fund in New York for defense of complainant's suit in New York; besides this, an amount of about $8,000.00 has been paid out of the fund which was in Taylor's hands by order of said decree in court, made in the suit so instituted by complainant. As to the manner of conducting the business of the board, respondent states that the plan adopted and acted upon was the best they were capable of establishing; that it was their object to manage the business to the best advantage; that all proper books have been kept, an examination of which by person experienced in the kind of business transacted will enable such person easily to arrive at a full understanding, and make a full report of the official acts done by himself and his cotrustees, and whether it appears in the testimony taken before the master, or the public reports of the board of trustees and its officers that its business is conducted in the loosest manner, as complainant has alleged, respondent admits it a matter about a competent and impartial examine, will not sustain the complainant. As to the refusal of the trustees to
509 carry out consent decree respondent that he never assented to the decree, and consequently refused to take any action in regard to it.

Respondent further says that he failed to answer the order made in this cause, to show cause at the last term of this court under the mistaken opinion that the answer of his cotrustee, J. S. Adams, in which he fully concurred, could be a sufficient obedience to the rule, and a sufficient answer to all the allegations is said petition, and his failure to prepare an answer was not induced by any want of respect for the court or its authority; and respondent submits himself to the orders of the court, & is ready and willing to make any further or other disclosure or answer in the premises which the court may order and direct, and prays that he may be discharged from the contempt of which he has been adjudged to be guilty.

S. B. CONOVER.

Sworn to before me this 16th day of December, A. D. 1872.
J. E. TOWNSEND, *Clerk.*

(Indorsed:) Francis Vose vs. Harrison Reed et al. Answer of Simon B. Conover. Filed Dec. 17, 1872. J. E. Townsend, cl'k. Filed Dec., 1873, J. E. Townsend, cl'k.

510 In United States circuit court, 3rd judicial circuit, for the northern district of Florida.

FRANCIS VOSE
vs.
TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

The petition of the defendants respectfully shows that they find themselves aggrieved by the decretal order made by this honorable court during the present term in the above-entitled cause, do hereby

Among other things, it was decreed (1), this cause having been called in its regular time for hearing, the said complainant being represented by his solicitor of record, and the said defendants by Attorney-General Wm. A. Cocke, by counsel of the said parties through their said solicitors, it is ordered, adjudged, and decreed (2), "That for the purpose of producing from the lands of the Internal-Improvement Fund of the State of Florida the amount of money necessary to pay the indebtedness established by the former decree of this court in said cause, as having a lien upon the same under the provisions of the act of January 6th, 1855, known as the internal-improvement act, Marcellus A.

511 Williams, Samuel A. Swann, and Hugh A. Corley, heretofore appointed by the said The Trustees of the Internal-Improvement Fund of the State of Florida to be their agents for the sale of the lands, be authorized and empowered to sell the same in such amounts and at such prices as will, in the exercise of their discretion, most rapidly produce the requisite means to discharge the said indebtedness and free the said landed fund from the said lien, always responsible for all their acts in the exercise of this discretionary power, not simply to the said trustees, but directly and at all times to this court itself under this decree, to be enjoined at any time by its order, to be liable to immediate punishment for contempt if they or either of them shall violate such order, or in any way prevent or prostitute the trust thus reposed in them to any other end than the one contemplated by this decree, that end being not simply the enforcement of said decree as the legitimate payment of said indebtedness, but as so the protection of the said landed fund for the benefit of the State of Florida, and all persons who may be ultimately interested therein. (2.) It is further ordered, adjudged, and decreed that the said agent shall pay

512 over to the said trustees the moneys that may be received by them from the sales of said lands as they shall be made, reporting simultaneously with such payments to Aristides Doggett, esq., the full and precise amount of the same with a detailed statement of the lands which may have been sold to produce the said moneys, and it shall be thereupon the duty of the said trustees to turn over the said moneys to the said Aristides Doggett, esq., receiver, monthly, with monthly statements of accounts as directed by the previous decree of this court, and it shall be the duty of the said Aristides Doggett, esq., to submit monthly to the said trustees a statement of the said detailed reports of sales as they shall be made to him, for the examination of the said trustees, whose right and duty it shall be to arrest the proceedings of said agents, if, in their judgment, they the said agents, are so exercising the powers invested in them by this decree as to jeapordize, or in any way sacrifice the interests of the State of Florida in the said fund. And it shall be the duty of the said receiver immediately upon such action by said trustees to proceed, in his character of master and

513 examiner under previous decrees of this court to take testimony touching the issue so formed, and to report the same, with his conclusion thereon, to either judge of this court, instanter, whether in term time or in vacation, that such action may be taken either to overrule such action of said trustees or to confirm the same, and inflict such penalty upon the said agents as may be deemed just and proper, who to that end are to be regarded in their discharge of the trust created in them by this decree, as the officers of this court, &c."

Your petitioner submits that so much of said decree is erroneous as orders the appointment of Marcellus A. Williams, Samuel A. Swann, and Hugh A. Corley, agents, to sell the Internal-Improvement Lands of the State of Florida. That there is no authority of law conferring upon a court sitting in chancery the appointment of unofficial agents to sell and dispose of real estate in pursuance of a decretal order of the court.

That such sale would be irregular unless made by a master duly appointed by the court, or by the proper officer of the court at public outcry, and upon the notice prescribed by law to be given before such sale.

514 That such decree is erroneous in the grant thereof which authorizes the said agents to sell the said lands, in such amounts and at such prices, as will in the exercise of their discretion most rapidly produce the requisite money to discharge the said indebtedness.

That such private sale by agents in amounts and at prices at their option would be in violation of the 16th section of the internal-improvement act passed June 6th, 1855.

That said decree is erroneous in that it takes the property out of the control of the statutory trustees, placing it in the hands of agents to be disposed of at private sale, and requiring the proceeds to be paid to the defendants, and the performance of various duties in relation to the management of said trusts-funds, which by a former decree of the court had been placed in the hands of a receiver, and in violation of the statute under which they held their trust. That the said decretal order is erroneous and irregular in that it prescribes duties to be performed by the judge of the court, and directs that such duties may be exercised either in term time or vacation.

That the said decree was improperly rendered without a hearing on the pleadings. That the original bill in the case was filed and the

515 decree of court rendered June 1st, 1872, and December, 1872, which proceedings were had against the predecessors of your petitioners, and that there was no charges before this honorable court against the present board of trustees of said fund who were appointed and qualified since said decrees were rendered; and that in the supplemental bill subsequently filed making the present board parties defendants to said suit, no specific charges were made against your petitioners, and all the allegations in said supplemental bill having been fully answered, they were entitled to a hearing and the judicial decree of the court. Your petitioner further submits that said decree is erroneous in that it purports to have been made by consent (whereas the said trustees, although they may be required to obey an order or decree of this court judicially made) cannot by consent surrender the trust reposed in them by a statute of the State, and transfer the duties devolving by law and their oaths of office upon them to the management and control of agents not known to the statutes.

That this being a public trust, created by statute for the benefit of the people of the State, as well as for those who held claims

against the fund, it is not competent for their att'ys to bind them by his consent, made without their authority and contrary to their wishes and instruction. That the trustees can only consent to or authorize any act by resolution of their board, and they aver that no resolution was made, has been passed by the board, comprising any authority to their attorney, Wm. Archer Cocke, to consent to the rendering of said decree.

That the said consent was made by their said att'y not only without any consent or authority of said board given in any manner whatever, but contrary to their instructions and wishes in the premises, as will also appears by the annexed copy of resolution adopted by the petitioners as a board of trustees since the rendition of said decree. Petitioners further submit that they ought not to be held responsible or their interests and rights in the premises prejudiced on account of the unauthorized consent of their said attorney, inasmuch as such consent was in violation and in fraud of law, and effects a public and official trust, involving the interest of the State, as well as the official integrity and responsibility of the said board of trustees, interests so large and responsibilities so grave and important, that from the very nature of the case their said attorney could not be able to respond in damages to the petitioners or to the State, that might result from his improper and unauthorized consent to said decree.

Wherefore your petitioner prays that your honor will be pleased to vouchsafe a rehearing of this cause before your petitioners, submitting to pay such costs as the court shall award, in case their complaint shall be found groundless, and your petitioners will ever pray, &c.

J. M. & H. I. BAKER,
Solicitors for Petitioners.

At a meeting of The Trustees of the Internal-Improvement Fund for the State of Florida, held at the capital on the 13th day of December, 1873. The following resolution was unanimously adopted:

Whereas the decree made against The Trustees of the Internal-Improvement Fund of the State of Florida in the U. S. court for the 5th judicial circuit, held at Jacksonville on the 4th day of December, 1873, purporting to be a consent decree, and pertaining to the receiver in the case of Vose *vs.* The Trustees, and appointing Messrs. Williams, Swain & Corley agents of the court to sell the lands of the State at rates and terms to be fixed by them, ignoring the right of the trustees to administer the fund, and placing the management of the same entirely out of the hands of the trustees, and in the hands and control of said agents and other officers of the court;

Whereas the said decree is entirely different from the well known wishes of the trustees and contrary to what they had reason to expect from various consultations with their attorney, and it appearing to us that the consent of our attorney to said decree admits the truth of all the allegations in the original bill of complaint as far as we are concerned, which we do not and never intended to admit.

Whereas the said decree was made without the knowledge and consent of any of the trustees, excepting the member who was acting as attorney for the trustees;

And whereas the said decree makes the management of the sale of lands cumbersome and expensive, and believe it will be for the best interest of the fund to have all restrictions concerning the management and sale of lands that are now imposed upon the trustees *summoned* therefore

Resolved that the attorney of the trustees be directed to institute immediately the necessary proceedings, to reopen the case in order that we may be heard by the court, and that this, as well as former decrees, may be annulled.

I certify that the foregoing is a true and correct copy taken from the minutes of The Trustees of the Internal Improvement Fund.

D. EAGAN,
Secretary of the Masters.

520 STATE OF FLORIDA,
County of Leon.

Personally come before me Dennis Eagan, one of the petitioners in said petition and a member of the board of Trustees of the Internal-Improvement Fund, who being duly sworn, says that the statements set forth in the foregoing petition which do not appear of record in the above stated cause are true, in substance and in fact.

DENNIS EAGAN.

Sworn to and subscribed before me this 10th day of January, A. D. 1874.

E. H. EDWARDS,
Clerk of the Circuit Court of Leon County, Florida.

(Indorsed:) Francis Vose vs. Trustees of Internal-Improvement Fund.

Petition for rehearing. Filed Jan'y 12, 1874. J. E. Townsend, cl'k.

521 In the United States circuit court for northern district of Florida.
In equity.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND, et al.

Now on this the day of May, 1874, comes Robert I. McDowell, Archibald Baker, D. A. Davis, Gaithem, James M. Baker, Bernblank & Gallaher, M. L. Holmes, by their attorneys J. M. & H. I. Baker, and in response to the objections of Francis Vose, the complainant, set forth in the petition filed by him, to the allowance of certain coupons of the Florida, Atlantic and Gulf Central Railroad Company, filed by the respondents with the master, A. Doggett, esq., under a decree of this court, and say that there is nothing set forth in the said petition either in law or in facts, stated sufficient to bar these respondents from the allowance and payment of their said coupons out of the Internal-Improvement Fund, now in said court. Because, 1st, it is not charged in said petition that these respondents or either of them are parties or
522 party to any suit in the State courts, or in the circuit or Supreme Court of the United States, prosecuting any claim for payment of said coupons, nor between what party or parties the payment of said coupons have been put in issue in any of said courts.

2d. It is not charged in said petition that any of the coupons filed and registered as aforesaid, which were detached from bonds after the holders thereof had accepted compromise and payment therefor, or after such bonds have been settled and surrendered.

3d. That the sinking fund under the act of 1855, was provided for the

payment of the principal and ultimate reduction of the internal-improvement bonds, and not for payment of interest as alleged in said petition; that the Internal-Improvement Fund was specially and irrevocably set apart to secure the payment of the interest of said bonds.

4th. That the coupons issued under said act, constitute no lien on the sinking fund, as alleged in said petition, neither do the bonds constitute any lien on the Internal-Improvement Fund.

5th. That the coupons on all bonds issued under the Internal-Improvement act are a prior lien on the trust fund created by said act, and payable to bearer, and nothing in said petition shows any reason why such lien of the coupons filed by respondents should cease
523 on sale of said road.

6th. The respondents having brought their said coupons into this court under a decree obtained by the petitioner, he is estopped from objecting thereunto, in the manner said and form set forth in his said petition.

7th. That the said petition is otherwise defi*ction* and insufficient, both in law and fact. And the prayer of the petitioner should not be granted.

J. M. & H. I. BAKER,
Att'y's for Respondents.

(Indorsed:) Francis Vose vs. Trustees of Internal-Improvement Fund. Replication to petitio*ner* of Francis Vose. Filed May 18, 1874. A. Doggett, master. J. M. & H. I. Baker, atty's, &c.

524 In the United States circuit court for northern district of Florida, fifth circuit.

FRANCIS VOSE
vs.
MARCELLUS L. STEARNS ET AL., THE TRUSTEES of the Internal-Improvement Fund of the State of Florida.

To the honorable the judges of the said court:

The defendants, in compliance with an order made by the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States and judge of said circuit, to "show cause why an attachment should not issue against them, as prayed in the petition of the said Francis Vose, and why a receiver, as prayed, should not be appointed," respectfully answer the said petition, and for cause why the prayers of the petitioner should not be granted show that they are ex-officio trustees of said fund, under and by virtue of a statute of the State of Florida, and entered upon the discharge of their official duties since the commencement of the suit in which the said orders and decrees mentioned and described in the complainant's petition were made; that they were in no way connected with the charges and allegations made in the original bill filed in said cause against their predecessors, or responsible for any act or acts alleged to have been done by them
525 in violation of their trust, or in contempt of the orders or decrees of this honorable court. And the defendants deny that they have, since they assumed the duties of trustees of said fund, as officers of the State, acted in contempt of any order, or used any fraudulent pretext whatever, for the purpose of thwarting any decree of this honorable court; but, on the contrary, it has been the wish and intention

of these defendants to carry out in good faith, to the best of their understanding, the provisions of the act creating said trust, and that they have fully respected and complied with all the decrees entered in said case according to their judgment and ability; and in the exercise of what discretion was left them in the discharge of their duties as trustees, they have endeavored faithfully to perform the duties therein required.

The defendants, further answering, say that the decree in said cause, signed by his honor W. B. Woods on the third (3d) day of December, 1873, purporting to be a consent decree, quoted in part in complainant's petition, was rendered upon the unauthorized consent of the said attorney of the defendants, made contrary to their wishes, and in direct violation of the instructions of the board of trustees acting in their official capacity; that as soon as they were informed that such decrees had been made, and during the same term of the court, the defendants,
526 by their attorneys, filed a petition for rehearing. That on account of the absence of his honor Judge Woods and his honor Judge Fraser deciding that he was not authorized by law to consider the petition, the said petition still stands for a hearing. But these defendants aver that notwithstanding they felt aggrieved and greatly embarrassed by the said decree, which purported to be a consent decree, they offered no opposition to the sale of the lands of the said trust by the agents of the court appointed under the said decree, but on the contrary, gave their aid and assistance, as far as they could do so, under the provisions of the internal improvement act and the provisions of said decree, as will more fully appear by the copies of the orders and proceedings of the board hereunto attached as exhibits to their answer. And the defendants deny that the failure by the said agents to make sales of lands under the authority vested in them by the said decree was caused by any unfriendly action on the part of these defendants, but that such failure was mainly on account of the financial crisis in this country, and other causes, which the agents in their report to this court say resulted "not only in checking all industries and shaking the confidence of capitalists in this country, but in causing a similar panic throughout Continental Europe in regard to American securities and
527 investments of all kinds."

These defendants admit that they did not assent to all the authority claimed by the said agents under the said decree. They did not understand, as claimed by the said agents, that the whole body of lands belonging to the trust was placed under their absolute control taking from the defendants all right to sell or dispose of any of the lands, as well as all authority to control the prices at which lands should be sold by said agents. (See Exhibit A.)

The said decree, on the contrary, made it the right and duty of the defendants, as trustees, to "arrest the proceedings of the said agents, if, in their judgment, the said agents exercised the power invested in them by said decree so as to jeopardize or in any wise sacrifice the interests of the State in said fund.

It being made the special duty of defendants, under the 16th section of the internal improvement act, to fix the value of said trust lands, the defendants believing they had the right under said decree to refuse to ratify any sale by the said agents which, in their judgment, was not for an adequate price, and with this understanding of their duty, defendants did pass a resolution directing deeds to be made in all cases where the sales were made for the prices authorized and
528 fixed *and fixed* by them, and that in all other cases no deed

would be given, but the treasurer was authorized to receive the money and give a memorandum receipt therefor, and forward it to the receiver to await the direction and order of this court, which will more fully appear from the copy of proceedings marked Exhibit B.

Defendants further say that the only other affirmative act required of the defendants, under the said decree of December, 1873, is to pay over all moneys received from proceeds of sales made by said agents to the said receiver, A. Doggett, esq., which order has been fully and promptly obeyed by these defendants, as appears by the statement in the complainant's petition.

The defendants deny that the refusal to issue certificate floats or warrants for 160 acres each, to the amount of two million acres, was, as charged, unfriendly to or in opposition to said decree; that said decree indicated no such duty to be performed on their part; and in the exercise of their discretion the defendants belived that the authority to locate an amount of land so large in parcels of 160 acres, at the option of the holder of the floats, would result in the disposal of the choice lands of the State, at the small price of 30 to 35 cents per acre, with an allowance of ten per cent. commissions to the agents for such sale. The defendants deemed the proposal
529 unwise and inexpedient, and declined the proposition of said agents, in manner shown by the preamble and resolutions of the board herewith filed as Exhibit C, which said action of the defendants has been made a subject of complaint by the said agents, as shown in the petition. The defendants say that notwithstanding they believed it to be for the interest of the trust to sell the land in large bodies at reduced prices, for the purpose of raising the money required by said decrees, they afterwards, in compliance with the views and wishes of said agents, agreed to issue certain certificates or floats covering 250,000 acres, for lots of 80, 160, and 640 acres, and to be sold by said agents at 37½ cents per acre, nett, and without commissions to agents, which said proposition appears from the report of said agents to have been on terms and conditions unsatisfactory to them, so much so that they declined to act under the proposal until they could get "further instructions from this court. The defendants admit that they made a similar contract with E. M. Cheney, to sell 400,000 acres in floats, at 37½ cents per acre, as shown in proceedings of the board marked Exhibit D. But they deny that the said Cheney was at the time governor's private secretary, as alleged. And as it appears by the terms of the contract, that payment was required in advance, the alleged fact that said Cheney
530 was "destitute of capital and general credit," is not material. The fund has sustained no injury thereby. The said contract was made in good faith, with reasonable assurance that its terms would be complied with, and the money received for the relief of the trust fund subject to said decree.

The defendants further admit that they did make an agreement with the Great Southern Railway Company to sell alternate sections along the line of said road at five cents per acre. The consideration for the said contract was not only for the amount of money to be paid for the land, but also to secure a valuable improvement to the State, and to carry out the policy inaugurated in this State by the internal-improvement act, which made a grant of alternate sections to all roads designated in the provisions of said act, upon the theory generally adopted in all such cases, that such aid not only secures the construction of an improvement of great public value, but developes the resources of the country, induces immigration, and greatly advances the value of the

remaining sections of land. That in making said contract the defendants were careful in providing that no lands should vest in or be conveyed to said railroad company until the defendants had ample evidence that the specified sections of ten miles of such road were completed according to the terms of the contract.

531 The defendants also admit that they accepted the proposal of Myron S. Mickles to withdraw from market for six months about 7,000 acres of land, for which he agreed to pay $1.25 per acre, upon the express proviso that he was to pay for at least 500 acres of the said land within sixty days, at the price agreed upon, namely, $1.25 per acre, and upon his failure to do so the lands to be restored to market, which is more fully shown by reference to copy of proceedings herewith filed marked Exhibit E. But they positively deny that the said lands were so withdrawn to permit the said Mickles to speculate on them, which charge the defendants believe to be malicious, and made without the slightest foundation in truth. That the said lands lay in Volusia County, where there was but little demand for them, and defendants believe that a sale of 7,000 acres, at $1.25 per acre, would be a good one.

The defendants deny that they reserved any lands from market at the request of M. J. Taylor, or sold any lands whatever to him for the purpose of speculation or any other purpose. The said Taylor made an offer to the board for 15,000 acres, to be located in a body, at 50 cents per acre, the lands to be located and paid for within 30 days, which will fully appear by reference to Exhibit F herewith filed. That the said lands were not selected or paid for, and no sale was made.

432 The defendants further admit that they did contract to sell a large quantity of land west of the Apalachicola River, to Wm. H. Gleason, but that the contract expired by its own limitation in March last, and no sales have been perfected under it. That the schedule of prices in that contract were:

For	50,000	acres	55	cents	per	acre.
"	100,000	"	50	"	"	"
"	200,000	"	45	"	"	"
"	500,000	"	40	"	"	"
"	1,000,000	"	25	"	"	"

Which will more fully appear by reference to the copy of contract herewith filed, marked Exhibit G. That the schedule of prices agreed upon in said contract was higher than the schedule adopted by the agents appointed by the court, as appears from the report of the said agents contained in said petition.

The defendants admit that they authorized J. E. Browne, of New York, to sell 1,000,000 acres or more at 28 cents nett, but required as one of the terms of the agreement that the lands should be selected in bodies of 250,000 acres, thus embracing large quantities of unsaleable land in the contract, which they regarded a far better sale than the proposed sale of floats at 30 cents per acre, with the privilege to locate the same on the best lands in the State, situated in small parcels. That the said contract was made or agreed to be made with express reference to a settlement of the claim of Francis Vose, the petitioner

533 under said decree, which will more fully appear by reference to copy of proceedings of the board herewith filed, marked Exhibit H. That the very transactions referred to in the said petition, and unfairly presented as an evidence of the resistance of defendants to the orders of this honorable court, when fully set forth exhibits the earnest

desire of the defendants to carry out the wishes of the petitioner and the decrees of court in his said suit.

The defendants, further answering, say that they did make a contract with the West Florida and Mobile Railroad Company, a company regularly organized under the laws of the State of Florida under the act of February 19, 1874, for the purpose of building a railroad from Chattahoochee west to the Florida line, en route to Mobile, in which contract they did agree to sell the lands now vested in them under said trust lying west of the Apalachicola River, at the price of five cents per acre, or upon the same terms as granted to the Great Southern Railway Company, with the exception contained in the resolution of the board, which appears from copy marked Exhibit I. Defendants further say that the said line of railroad is a part of the system designated in the internal-improvement act, which grants alternate sections for six miles on either side of said line to aid in its construction. That
534 the building of said road through West Florida has always been considered an improvement of the highest importance for the development and prosperity of the State, as well as for the success of that part of the internal-improvement system already completed.

Defendants further show that the people of West Florida have no direct communication by railway to other sections of the State, a privation which causes great dissatisfaction and has tended to provoke an express desire on their part for annexation to the State of Alabama. The defendants made the said contract in good faith and with the reasonable assurance that it would secure the building of said road, but said contract has since been annulled by the consent of the parties thereto, on account of an error in the price to be paid and for other causes. These defendants, nevertheless, are so fully impressed with the great necessity for said road in promoting the integrity, welfare, and prosperity of the State, and especially West Florida, that they would now be willing to enter into a similar contract to build said road, unless restrained by the injunction of this court. The defendants deny that they refused to give any information or facilities for examination of the books of the trust to the petitioner, but, on the contrary, have always permitted him to examine the books and proceedings of the board, and to take copies at will. The defendants em-
535 phatically deny that the books of the trustees have been negligently kept since the defendants entered upon the discharge of their duties as trustees. They deny the allegation falsely and maliciously made by the petitioner that these defendants have failed to cancel and have put again into circulation interest coupons which have been paid; they deny that a large number of said coupons, or any number whatever, which had been paid and canceled, have disappeared from the custody of these defendants as trustees since they have been in office. That no internal-improvement bonds have been issued by them, and no coupons have been paid them, but all bonds and coupons which have come into their possession for cancellation have been immediately placed on record and canceled.

The defendant' further deny that the money which has come into their hands as trustees, or any part thereof, has been wasted, misappropriated, or expended in payment of any officer not entitled to it by law. They deny that any of said fund has been paid to support the litigation of the State of Florida in the Supreme Court of the United States, but aver from information and belief, that four thousand five hundred dollars have been paid out of said fund, under an order of court to the attorney of the petitioner for his services in this

536 cause. That all moneys paid out by the defendants in litigation has been in this and other suits in which the defendants, as trustees, are parties, and for the legitimate purpose of protecting the rights and interest of the trust fund placed in jeopardy by the petitioner and others. That if no money has been applied by them for the discharge of the debt due by the Internal-Improvement Fund, it is because they are required by the order of this honorable court to pay all the moneys of said trust coming into their hands to the receiver appointed upon the prayer of the petitioner.

The defendants further say that while they have been ever ready to afford every facility to the petitioner to examine books of the trust, they could not spend the time nor incur the expense of furnishing him with copies of records, or prepare impossible records, of transactions of which no record exists, or to secnre laws to be enacted by the legislature of Florida, or comply with many or other such unreasonable requests, the performance of which were not made part of the duty of these defendants by the terms of said decree. The defendants further say that they did not refuse to testify before the master appointed by this court, Aristides Doggett, esq., in Tallahassee, from any want of respect for this honorable court or its officers, but under the ad-

537 vice of counsel Wm. Archer Cocke, they were advised that, as defendants to this suit, they could not be personally examined under the terms of the decree as witnesses by the said master, and that no demand was made on them for the books of the trust, or any order given to produce them, which they would have cheerfully obeyed, as will appear by copy of subpœna here with filed.

These defendants are ready and willing to testify before said master as to all matters within their knowledge if this honorable court so directs, and to do, abide, and perform any order of the court in the premises, and aver that they have not and will not knowingly do any act or acts in contempt of the orders of this honorable court or the process of its officers. The defendants, having answered the petition of the said Francis Vose in compliance with the order to show cause why attachment should not issue against them, &c., or so much of said petition as they are advised is material or necessary to answer, all which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

M. L. STEARNES,
CLAYTON A. COWGILL,
DENNIS EAGAN,
Defendants.

J. M. & H. I. BAKER,
Att'ys for Def'ts.

538 Personally appeared before me, clerk of said court, Marcellus L. Stearns, Dennis Eagan, Clayton A. Cowgill, defendants, who being duly sworn, depose and say, that the statements, aversements, and allegations in the foregoing answer made of their own knowledge are true, and those made upon information they believe to be true,

M. L. STEARNS.
CLAYTON A. COWGILL.
DENNIS EAGAN.

Sworn to & subscribed before me this 14th day of May, A. D. 1875.
PHILIP WALTER, *Clerk.*

(Indorsed:) In the United States circuit court for the northern district of Florida. Francis Vose vs. Marcellus L. Stearns and others, The Trustees of the I. I. Fund. Answer to petition. Filed this 14th day of May, A. D. 1875. P. Walter, clerk. J. M. & H. I. Baker, defendant's att'ys.

539 In the United States court for the northern district of Florida.

FRANCIS VOSE
vs.
MARCELLUS L. STEARNS ET AL., THE TRUSTees of the Internal-Improvement Fund of the State of Florida.

To the honorable judges of said court:

The defendant, W. A. Cocke, one of the Trustees of the Internal-Improvement Fund of the State of Florida, in compliance with an order made by the Hon. Joseph P. Bradley, one of the associate justices of the Supreme Court of the United States and judge of the said circuit, to show cause why an attachment should not issue against him as one of the trustees aforesaid, respectfully answers the said petitions, and in addition to what is contained in the said answer of his cotrustees' answer, and that as far as he has had the means and opportunity of advocating the payment of the debt due by the trustees to Francis Vose, that he has on all occasions done so, and that the books of the trustees will show that he has done nothing in any manner to hinder or delay the payment of the said debt, but has to 'pring his occupied the posi-
tion that it was a just and legal claim, and that it ought
540 to be paid, and has always urged the trustees to take such action as he thought condusive to such end.

That in relation to the consent decree entered by his hon., W. B. Woods, one the 3rd of December, 1873, when this defendant was counsel for the trustees, which decree he still approves and individually does not wish to have it set aside; he also denies that he had any instruction from the trustee' adverse to the tenor and object of said decree, but consented to it as counsel because he claimed the right as such to take such action in the premises as was not inconsistent with his relations to the trustee' as counsel, and his duties as one of the said trustees. That nothing had been said in relation to the appointment of Williams, Swam & Corley, until a day or two before the decree was entered, which decree was the result of several protracted arguments with the counsel for said Vose, and this defendant was of opinion that if some such decree was not entered, that execution would issue against the lands of the said trust, and he is satisfied that if the prospectus of
the agents Williams, Swann & Corley, had been acceeded to, that
541 they would have gone far towards paying the debt due Francis Vose. That in relation to this defendant not answering questions proposed to be propounded to him as one of the trustees, referring to the answers of his cotrustees which he says is correct, and containing his testimony for his counsel, and having answered, he prays to be dismissed with costs, &c.

W. A. COCKE, *Trustees, &c.*

(Indorsed:) Answer of W. A. Cocke. Filed May 15th, 1875. Philip Walter, clerk.

542 The petition of Francis Vose, of the city of Boston, respectfully shows:

That he is the plaintiff in the above-entitled action; that the same is brought to restrain the waste and unlawful disposal of the monies and the lands constituting what is known as the Internal-Improvement Fund of the State of Florida, and was commenced by the filing of a bill in the year 1868 or '69, by this complainant on his own behalf, and for & on behalf of all others who should come in and make themselves parties to the suit on terms to be approved by this honorable court; that said proceedings have been continued from the day of the commencement of this suit until the present time, and a receiver has been appointed and a decree has been obtained for the sale of lands referred to and mentioned in said bill for the purpose of paying the past-due interest upon certain bonds held by this complainant and others, and secured by mortgage on the said land. Prior to the commencement of this suit this complainant instituted other similar proceedings in the court of the United States, in and for the northern district of Florida, for the same general purposes as those comprehended in this suit, and considerable and laborious and expensive proceedings were taken in that suit by the complainant and his solicitors and counsel. This complainant also caused a suit to be commenced in the supreme court in equity in
543 the State of New York, in which various protracted, expensive, and arduous labor was performed by him and by his counsel in aid of the general purposes in the above-entitled suit. The proceedings in New York terminated in a decree in favor of this complainant, so far as the residents in Florida were concerned, and extensive negotiations have been set on foot for the settlement of the New York suit. Your petitioner is unable to state in detail the formal proceedings taken in this honorable court, and prays leave to refer to the record thereof, and such depositions supplemental to, and in aid of this proceeding as he may be advised to submit herewith. All the information, records, documents, and papers necessary to be obtained in order to bring the said several suits, and to conduct the same, have for the most part been obtained and procured by your petitioner, at his own instance and expense, and by his own personal efforts. The labor performed in aid of his counsel and solicitors in procuring such information and in furnishing such documents and papers, and generally acting for and in their behalf, and under their direction has been very onerous, long-continued, and constant. It has required your petitioner to proceed from his residence, in the State of Massachusetts, to the State of Florida, at least five times in each year since the commencement of this suit,
544 and to remain in Florida and in Georgia for a great part of the year, both in winter and in summer; the entire expenses of each of said trips has been borne by your petitioner out of his own pocket. Your petitioner has been compelled to retain divers counsel in this suit and the matters connected therewith, in Boston, in New York, in Savannah, and in Florida, and he is now advised, and verily believes that such retainer has been in aid of, and of advantage to, the purpose of this suit.

He has paid such counsel to some extent by way of retainer and otherwise, and has also borne the expense of procuring records, documents, and papers of subpœnaing witnesses, and generally all the expenses and disbursements comprehended in statement to be found in Schedule A, hereto annexed, and which he prays may be taken as part of this, his petition. Your petitioner is advised, and verily believes, and is able to state of his own knowledge, that his efforts have been of large advan-

tage and benefit to the several bondholders in this proceeding, and that without his efforts as made, and the information which he has been able to acquire and furnish, the solicitors and counsel for the complainant in this action would have been subjected to a great deal of embarrassment, & to very much increased expense, because as he is advised and verily believes, all the service was necessary to be performed
545 by some person if not by your petitioner, which from his long acquaintance with the interests involved from their very origin, could be better and more expeditiously performed by him than by anybody else. Your petitioner has devoted nearly his entire time and attention for the last five or six years to the due prosecution of this suit, at the request of his solicitors and counsel, and by their concurrence, and he submits that such services have been a very great advantage to the fund and to the interest of all the bondholders. Your petitioner is advised and believes that in cases of a similar character it has been customary to make an allowance to such of the parties in interest as has succeeded in obtaining the decree of the court by their personal efforts and by the expenditure of their money, time, and attention to the interest of the bondholders, out of the fund under the control of the court, and that it is a well-acknowledged and established principle in equity that such allowance should be favored by the court, and are considered just of themselves, and that the charges properly to be made against the fund in this case will comprehend fees of counsel and costs of court which have been extended in the litigation or in the appointment of the receiver or in the creation of the fund in his hands or in the incidental or interlocutory proceedings in the cause, and that all like expenditures in the antecedent litigation before the Federal court in
546 Florida, are likewise a fair charge on the fund, comprehending also all proceedings taken against the fund resulting in the sale of the Florida Railroad and the other railroads, and deposited in the State of New York or elsewhere, and all such fees and costs paid to counsel not actually engaged in the litigation embraced in this matter, but for opinions and other like legitimate professional services; also the moneys expended by your petitioner in the employment of agents to procure information and communicate with parties in office in the State of Florida and other wheres, and to promote in the legislature of the State, so far as might be practicable and lawful, the general objects of this suit; and also the personal expenditures of your petitioner while engaged in attending personally to the business embraced in this suit, being the cost of living and traveling, of documents, &c., and also a fair remuneration for the labor and services of your petitioner, the loss of time, and for the successful effort of your petitioner in saving the property embraced in this litigation from which alone the holders of the bonds can ever hope to recover their money.

Wherefore your petitioner prays that an allowance may be made to him for all such labor, services, time, and expenditure out of the fund in this suit, and that the same may be ascertained by this honorable
547 court in such manner as this honorable court shall direct; and that A. Doggett, esq., the receiver appointed in this action, may be directed to pay, out of the funds in his hands, to your petitioner, such sum as shall seem to this honorable court just and reasonable.

And your petitioner will ever pay, &c.

UNITED STATES OF AMERICA,
North. District of Florida:

Personally appeared Francis Vose, who, having been duly sworn,

deposes and says that he has read the foregoing petition, & that all of the facts stated therein are true to his own personal knowledge.

F. VOSE.

Sworn to & subscribed this May 17th, 1875.

[SEAL.] PHILIP WALTER, *Clerk.*

(Indorsed;) Francis Vose vs. The Trustees of the Internal-Improvement Fund of Florida et al. Petition of compl't for allowance of expenditures, etc., of litigation. Filed this 17th day of May, 1875. Philip Walter, clerk. Jackson, Lawton & Bassinger, sol's for petitioner.

548 In the circuit court of the United States, fifth judicial circuit, for the northern district of Florida.

FRANCIS VOSE ET AL.
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida.

Francis Vose and his solicitors, and all parties interested, will please take notice that a motion will be made before his honor, Judge P. Fraser, presiding in said court, on to-morrow morning, the 22nd inst. at 10 o'clock at the court-room, in the city of Jacksonville (or as soon thereafter as said judge can hear the same), for an order or decree of said court requiring Hon. A. Doggett, master & receiver in said cause to charge the amount of $5,000 (hitherto ordered and decreed by said comp. in said cause to be paid by the said master & receiver to the solicitors of said Francis Vose) to said Francis Vose, and to deduct the same from the amount allowed or to be allowed him on his coupons on file with said master & receiver under and by virtue of
549 the order or decree of distribution made by Hon. J. P. Bradley, associate justice of the Supreme Court of the United States, presiding as circuit court judge in said court, dated May 18th, 1875.

May 21st, 1875.

C. P. COOPER,

Solicitor for Bradley Martin, owner of coupons on file with Master.

(Indorsed:) In circuit court of the United States, fifth judicial circuit northern dist. Fla. Francis Vose et al. vs. Trustees of the Internal-Improvement Fund of Florida. Notice of motion to charge $5,000 to Vose coupons. Filed this 22d of May, A. D. 1875. Philip Walter, clerk.

550 In the circuit court of the United States, fifth judicial circuit, northern district of Florida. In chancery.

FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal-Improvement Fund of the State of Florida.

Orders and decrees in above suit.

551 FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal-Improvement Fund of the State of Florida. } Bill for injunction and relief.

This cause came on to be heard at chambers in the city of Jackson.

ville, State and circuit aforesaid, on the second day of June, A. D. 1869, before the judge of the district court of said district, upon the motion of the complainant for an injunction according to the prayer of said bill, and was argued by counsel, and, it appearing to the said judge that nearly all the alleged misappropriation of the said Internal-Improvement Fund were made by persons who are not parties to this suit, and before the defendants were trustees of the same, and that the said fund was created by an act of the legislature of the State of Florida entitled "An act to provide for and encourage a liberal system of internal improvements in the State ot Florida," approved January 6th, 1855, and that by said act there is incorporated into said fund "all the swamp land, or land subject to overflow, granted
552 this State by an act of Congress, approved September 25th, A. D. 1850, together with all the proceeds that have accrued or may accrue hereafter to the State, from the sale of said lands." That the act of Congress of September 25th, 1850, provides, "That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively as far as necessary to the purpose of reclaiming said lands"; that the pledge of said land or the proceeds thereof in the first instance, for any purpose other that prescribed in the grant, is an illegal appropriation thereof, of which the complainant had notice. That the contract for the pledge of these lands and the proceeds thereof, for the payment of the interest upon the bonds of the complainant was illegal, and that the application of said lands or their proceeds, by the legislature of the State, *of* the purposes of the grant as prescribed by Congress, cannot impair the obligation of an illegal contract, and that complainant cannot be injured by such application.

Wherefore it is ordered that the said motion and prayer for an injunction in this cause be denied.

June 2nd, 1869.

(Signed) PHILIP FRAZER,
U. S. Dist. Judge.

553 FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal-Improvement Fund of Florida et al.

On this 6th day of December, A. D. 1870, at chambers, in Jacksonville, in the State of Florida, and in the said northern district of Florida, this cause came on to be heard upon the motion of the complainant that a writ of injunction issue according to the prayer of the bill.

And due notice of said motion having been given to defendants and the same having been argued by counsel of the parties and considered by the court, it is therefore ordered that the writ of injunction issue out of this court and under the seal thereof, in manner and form following, that is to say:

UNITED STATES OF AMERICA,
State of Florida:

In the fifth circuit court of the United States for the northern district of Florida.

To Harrison Reed, Robert H. Gamble, Alvin R. Meek, Frank
554 W. Webster, Simon B. Conover, and John S. Adams, the Trust-

ees of the Internal-Improvement Fund of Florida, and to their successors, the Florida Improvement Company and its agent Myron S. Mickles, and all others, its agents and servants, in the said State of Florida.

Whereas, it appears to me, W. B. Woods, judge of the courts of the United States for the fifth judicial circuit, that Francis Vose, a resident and citizen of the State of New York, brings his bill of complaint in the circuit court of the United States for the northern district of Florida, in which he shows that he is the owner of a large number of bonds issued by the Florida Railroad Company, with a large number of coupons upon them which are past *one*, and which you, the said trustees named above, have refused to pay, in violation of an act passed by the legislature of Florida on the 6th day of January, in the year 1855, irrevocably vesting in you 10,500,000 acres of land in trust, to make sale of the same according to the provisions of said act, and from the proceeds of such sales to pay the coupons on such bonds as they should fall due; but instead thereof you, the said trustees, are misapply-
555 ing the funds belonging to said trust, are improperly and fraudulently misappropriating the same, are selling and transferring said land in amounts in manner and for considerations that are wholly inconsistent with and violation of said act; that you are donating and disposing of the same for merely nominal prices, and for scrip, and State warrants, not recognized as the lawful currency of the United States; more especially and recently have entered into an agreement with you the said The Florida Improvement Company, and you the said Meyron S. Mickles are the agent of the said company, by which said agreement 1,100,000 acres of land belonging to said trust to be selected from the entire trust domain are transferred to the said New York and Florida Lumber, Land, and Improvement Company, at the nominal price of ten cents per acre, and that you, the said Mickles, and others, the agents and servants of said company, are selecting, locating, advertising, and selling the said lands; and that thus you, the said trustees, are wasting and destroying the land and the fund so vested in you by said act of 1855, and by the foregoing and by
556 other lawless and fraudulent acts, are diverting the monies which have come and are coming into your hands by virtue of said trust from the payment of said coupons in the order in which they fell due.

And whereas, the said complainant by his said bill prays that the writ of injunction be issued restraining you, the above-named parties, from the acts which are therein complained of:

I do therefore, in the name and by the authority of the United States of America, strictly enjoin and command you, the said Harrison Reed, Robert H. Gamble, Alvin R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the Trustees of the Internal-Improvement Fund of Florida, and your successors, under penalty of attachment for contempt, and a pain of ten thousand dollars for each act violative of this injunction, that you and each and all of you, both in your individual and collective capacity, do desist from selling or donating or disposing of the land belonging to said trust otherwise than in strict accordance with the provisions of said act of 1855, fixing the prices and allowing pre-emptions of the same in obedience to all the re-
557 strictions of that act; that you desist from selling said lands for scrip or State warrants of any kind, or for ought else than current money of the United States; that you desist from lending or in-

vesting, appropriating, disposing of, or using any of the monies or property of said trust-fund, except in applying them to the creation of the sinking fund provided by said act of 1855, and so applying them in strict accordance with the provisions of that act, where said monies properly belong to said sinking fund, or in payment of the coupons of said bonds where said monies have proceeded, or shall proceed, from the sale of said lands; and that you desist from paying said coupons in any other mode than in the order of their priority, fixed by the date of their coming to maturity, paying first such as first became due and the others in the order in which they fell due.

And I do enjoin and command you further and specially that you desist and refrain from any and all action in executing and carry-
558 ing out the agreement between you and the said The Florida Improvement Company described in said agreement "The New York and Florida Lumber, Land and Improvement Company," which said agreement is embodied in the resolutions passed by you, the said trustees, on the first day of March, in the year eighteen hundred and seventy, or thereabouts, and by which said agreement you, the said trustees, give and grant to the said company, their successors and assigns, "authority to select and locate from the lands belonging to the Internal-Improvement Fund one million one hundred thousand acres of said land at the rate of and price of ten cents per acre," upon terms and conditions which are therein set forth.

And I do enjoin and command you, the said Florida Improvement Company, and you, the said Myron S. Mickles and others, the agents and servants of the said The New York and Florida Lumber, Land and Improvement Company; that under the penalty and pain hereinbefore set out, you desist from further action under the said agreement with the said trustee, whether in selecting or locating lands embraced
559 in said agreement, or in advertising and selling the same, or in disposing of or intermedling with the proceeds which have resulted from the sale of any portion of the same, further than to retain them safely, subject to the future order and decree of this court.

In witness whereof I have hereunto set my official hand, at Jacksonville, in the northern district of Florida, this sixth day of December, in the year eighteen hundred and seventy.

W. B. WOODS,
U. S. Circuit Judge for the 5th Circuit and Northern District of Florida.

Upon the complainant entering into and filing bond, with two or more sufficient sureties, to be approved by the clerk of said circuit court, in the penal sum of twenty-five thousand dollars, conditioned that the complainant shall pay all damages sustained by the parties enjoined or either of them, by reason of said injunction in case said injunction is wrongfully obtained.

W. B. WOODS, *Judge.*

560 FRANCIS VOSE, COMPLAINANT,
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida et al., defendants. } In equity.

Motion by the Florida Improvement Company to dissolve the injunction made in chambers at Savannah, December 14th, 1870.

Upon hearing argument of counsel upon plea of defendant to the

jurisdiction of the court, verified by affidavit of counsel, it was adjudged:

(1.) That such verification was not sufficient to sustain the plea, and that for the purposes of said motion it could only be regarded as an affidavit.

(2.) That the statements of said affidavit are not sufficient to overcome the allegations of complainant's amended bill, as to the residence of the said The Florida Improvement Company.

And that consequently the motion must be refused, and the injunction, as heretofore granted, continued.

W. B. WOODS, *Judge.*

561 FRANCIS VOSE *vs.* HARRISON REED ET AL., TRUSTEES INTERNAL-Improvement Fund et al. } Bill for injunction and relief.

And now comes the said complainant, by his attorneys and solicitors, and it appearing that subpœna in chancery has been duly served upon the defendants in the above-entitled action, in conformity with the rules and practice of said court; and, it further appearing that the time allowed by said rules and practice of this court, for the defendants to file their answer, plea, or demurrer to the complainant's bill of complaint, and that no answer, plea, or demurrer has been filed by either of defendants, except D. S. Walker, and that said defendants, save the said D. S. Walker, are in default thereof; it is therefore ordered, adjudged, and decreed that all and every the material allegations, matters, and things in said bill of complaint contained and set forth, be taken, held, and considered as confessed by the said defendants so in default as aforesaid.

Feb'y 6th, 1871.

JACKSON, LAWTON & BASSINGER,
BISBEE & ARCHIBALD,
Complanant's Sol's.

562 In the circuit court of United States for the northern district of Florida. In chambers at Savannah. April 17, 1871.

On reading this petition it is ordered that Harrison Reed, Rob't H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, John S. Adams, and J. B. C. Drew, The Trustees of the Internal-Improvement Fund of Florida, and any others their successors, show cause before me or the Hon. Jos. P. Bradley, judge of the Supreme Court of the U. S., for this judicial circuit, on the 8th day of May next, at the rooms of the courts of the United States in Savannah, and at ten o'clock in the morning, why a receiver should not be appointed in accordance with the prayer of said petition; and that the said parties above named, and also Myron S. Mickles and E. A. Studwell, and others, agents and servants of the Florida Improvement Company, show cause, at the same time and place, why the penalty set out in said writ of injunction should not be inflicted upon them, and each of them, in accordance with petitioner's prayer. And it is further ordered that said defendants,
563 hereinbefore named, have leave to file their answers to complainant's bill of complaint, referred to in said petition as having been filed by him in this court at any time before the day appointed for said showing cause by them, and to use such answers, whether they be filed

or not, at said hearing, provided a good reason be given for the failure to file them.

And it is further ordered that the parties hereinbefore named as defendants shall receive notice of this order by service of a copy of the same and of this petition, but without the exhibit, upon their solicitors at least ten days before the 8th day of May next.

And it is further ordered that the clerk of the United States courts at Jacksonville deliver the original bills of complainant, and all other original papers constituting the record in said cause of Francis Vose vs. The Trustees of the Internal-Improvement Fund and others, to complainant's counsel, that they may be used in said hearing on the 8th day of May next.

W. B. WOODS,
U. S. Circuit Judge for 5th Circuit and Northern District of Florida.

564 FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES INTERNAL-Improvement Fund of Florida et al.

This case came on to be heard at chambers, in Jacksonville, Florida, on the 18th day of May, A. D. 1871, upon a motion to dismiss the bill as to the New York and Florida Land and Lumber Improvement Company and the Florida Improvement Company. Also upon a motion to dissolve the injunction granted by his honor Judge Woods in said case on the 6th day of December, A. D. 1870; also upon a motion for the appointment of a receiver; also for an attachment against the Trustees of the Internal-Improvement Fund of Florida and others for alleged violation of the injunctional order aforesaid.

And all of said motions were argued by counsel.

Wherefore it is adjudged and decreed as follows:

1. That the bill be dismissed as to the New York and Florida
565 Land and Lumber Improvement Company, and that it be retained as to the Florida Improvement Company.
2. That the motion to dissolve the injunction be denied.
3. That the motion for the appointment of a receiver be also denied.
4. That the conveyances made to the Florida Improvement Company of one hundred thousand acres of land, both of which were executed after the injunction in said case was granted, were in violation of, and in disobedience to, said injunction on the part of said trustees who joined in the execution of conveyances, and upon the part of the officers and agents of the Florida Improvement Company and E. A. Studwell; and it is therefore adjudged and decreed that the said trustees who joined in the execution of said conveyances, as well as the officers of said Florida Improvement Company and C. A. Studwell, do cause all of said lands embraced in said conveyances, to be reconveyed and returned to the Internal-Improvement Fund of Florida on or before the first Monday in December next; and on failure of either or any of
566 said parties to do, or procure to be done, all that is necessary to return said lands to said fund by the time specified herein, the party or parties so failing shall be held in contempt of court, and an attachment shall issue accordingly.

JOSEPH P. BRADLEY,
Assc. Justice Sup. C't U. S.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

In chambers.

On motion of complainant's solicitors, and with the consent of solicitors for defendant hereafter to be filed in the office of the clerk of said court, it is ordered that Robert B. Hilton be appointed examiner to take testimony under the rule of equity practice upon application by either party.

Savannah, May 20, 1871.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

567 FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES INTERNAL-Improvement Fund of Florida et al.

It is ordered that Aristides Doggett be, and is hereby, appointed examiner in this cause, with power to take proofs and testimony therein, and that the time for taking testimony in said cause be extended for three months.

Dated October 11th, 1871.

JOS. P. BRADLEY,
Associate Jus. of Supr. Court U. States.

FRANCIS VOSE
vs.
HARRISON REED ET AL., THE TRUSTEES OF the Internal-Improvement Fund et al

It is ordered that this cause be referred to Aristides Doggett, esq., who is hereby appointed master in chancery pro hac vice to in-
568 quire and state to the court—

(1.) The entire amount of lands irrevocably vested in The Trustees of the Internal-Improvement Fund of Florida, by the act of January 6th, 1855, at the date of said act, distinguishing the lands known as internal-improvement, lands from those known as swamp and overflowed lands, specifying the amount respectively of each, and the prices at which they have been held by the trustees per acre under provisions of said act.

(2.) The entire amount which passed to the board of trustees, composed of David S. Walker and others, the immediate predecessors of the present trustees, the amount sold by them, at what prices, and for what aggregate sum; the amount which passed to Harrison Reed and others, the present or actual trustees; the amount sold by them, and at what prices; the amount disposed of by either and by both of these boards of trustees, otherwise than by sale for money; that is to say, how many acres, and of what lands for State scrip, tax-paying or non-
569 tax-paying, with the dates of such sales, and the names of the persons to whom sold, how many acres for coupons of bonds, specifying the dates of such sales, the persons to whom and the prices at which they were sold, also describing the coupons given in payment-

by the bonds from which they were taken, and by their dates respectively.

(3.) To state all agreements or contracts which may have been entered into by the said trustees with any person or corporation, describing the same by their dates, considerations and conditions. If originally executory how far such contracts have been executed.

(4.) Where conveyances or contracts to convey have been entered into for the purpose, and the consideration of internal improvement, to state what such works of internal improvement were in design; how far the design has been carried out, what works of improvement have been completed or promoted; more especially to state the number of acres of lands originally swamp and overflowed which have been actu-
570 ally drained under or because of any such conveyance or contract; specifying the localities of all such drained lands and also to state the amount of such swamp or overflowed lands which have been actually drained by the said trustees themselves, specifying their localities.

(5.) To state the amount of bonds that were originally issued by railroad companies under and by virtue of the provisions of the act of January 6th, 1855, describing such bonds fully and explicitly, giving the dates of their signature and the dates of their actual issue, and the number of coupons, if any, which were detached from them at the dates of their actual issue.

(6.) To state the number and aggregate amount of such of these bonds as have been actually taken up or cancelled, whether by the said trustees or the said railroad companies, or by any party whatsoever, specifying with precision the dates of such taking up or cancellation; and what became of the coupons attached to, or which would
571 have been attached to such bonds at the time of such taking up and cancellation.

(7.) To state the number and aggregate amount of such bonds and coupons as are actually outstanding, the computation of the amount due upon said bonds and coupons to be brought down to the first day of the next term of this court, or as near thereto as may be possible in view of the times when the said coupons will hereafter fall due.

(8.) To state the amount of the fund actually in the hands or under the control of said trustees, which is known as the sinking fund, and which was provided by said act of January 6th, 1855, to meet the principal of said bonds when it shall fall due. How much has been paid to said sinking fund, when, and in what amounts paid in, and whether in money or in any other form, and the amounts paid respectively in each.

(9.) To state what investments have been made, if any, of such
572 sinking fund by said trustees, in what securities or choses in action, and at what rates *where* such securities were below par at the times of such investments.

(10.) To state of what such sinking fund consisted when it fell into the hands of David S. Walker and others, trustees; of what it consisted when it fell into the hands of the present or actual trustees; of what it consists now or will consist at any time up to the date of filing said statement; and what is and will be its value in dollars if all such securities be taken at par; what is or will be its value if all such securities be taken at their value in market, at the date of said filing.

(11.) To state what has been done with such securities, if any such have disappeared or been withdrawn from the said fund; and if any such shall have been exchanged at any time for others; to state by

whom, at what time, and at what rates such exchanges may have been made.

573 (12.) To take and state an account of all moneys which have already come or which will hereafter come into the hands of the said actual trustees, or of their predecessors (bringing such statement down to said date of filing), from the sale of lands originally belonging to the Internal-Improvement Fund; to take and state an account of all expenditures of such moneys as have been, or shall hereafter be expended by the said trustees down to the date of said filing.

(13.) And for the better discovery of the matters aforesaid and for the better taking of the said account, the parties are to produce before the said master, on oath, all deeds, or books, papers, and writings in their custody relating thereto, and are to be examined, etc., as the said master shall direct; and the said master shall have free access to and for this purpose the control of the record papers in this cause; and shall have full power to summon any person before him

574 as witness, issuing in his discretion the subpœna duces tecum; and shall also have power and authority, and is hereby directed to make publication in such public gazette or gazettes as may seem to him best adapted for the purpose, giving notice to all persons holders of bonds or coupons of bonds issued by railroad companies under the provisions of the act of January 6, 1855, and asserting a claim against the Internal Improvement Fund of Florida, to produce the same and to verify the same before him, that the entire indebtedness of the said fund may be ascertained and that their rights may be regarded and protected by the final decree to be rendered in this cause.

And it is further ordered that the said master do file his said report at least sixty days before the first Monday in December next to enable either party to file exceptions to the same, that the said cause may come to a final hearing upon said exceptions and upon bill, answers, exhibits, and testimony at the next term of this court.

Dec. 7th, 1871.

PHILIP FRAZER, *Judge.*

575 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND OF FLORIDA ET AL.

This cause came on to be heard on bill, exhibits, answers, etc.

Whereupon it is ordered and decreed that there is due to the complainant, Francis Vose, by The Trustees of the Internal-Improvement Fund of Florida, the sum of two hundred and eleven thousand eight hundred and eighty-five dollars and forty-five cents, upon the past-due coupons of one hundred and ninety-five bonds of the Florida Railroad Company, numbered as follows, viz: Number four hundred and thirty-three (433); numbers four hundred and ninety (490) to five hundred and eighteen (518), both inclusive; numbers six hundred and forty-nine (649) to six hundred and fifty-six (656), both inclusive; numbers six hundred and fifty-seven (657) to six hundred and ninety-nine (699),

576 both inclusive; numbers seven hundred and sixteen (716) to seven hundred and twenty-five (725), both inclusive; numbers seven hundred and twenty-seven (727) to seven hundred and thirty-six (736), both inclusive; numbers seven hundred and thirty-eight (738) to seven hundred and forty-seven (747), both inclusive; numbers nine hun-

dred and four (904) to nine hundred and fourteen (914), both inclusive; numbers nine hundred and fifteen (915) to nine hundred and seventeen (917), both inclusive; numbers nine hundred and eighteen (918) to nine hundred and twenty-nine (929) both inclusive; numbers twelve hundred and thirty-three (1,233) to twelve hundred and forty-nine (1,249), both inclusive; numbers ten hundred and forty-six (1,046) to ten hundred and eighty-six (1,086), both inclusive.

And that the further sum of six thousand eight hundred and twenty-five dollars will fall due on the first day of March in the year eighteen hundred and seventy-two, and semi-annually thereafter on the first days of September and March, until the first day of March in the year eighteen hundred and ninety-one, making an aggregate of two hun-
577 dred and seventy-three thousand dollars when the bonds themselves (one hundred and ninety-five thousand dollars) will also fall due.

Secondly. It is further ordered and decreed that The Trustees of the Internal-Improvement Fund of Florida, hold subject to the payment of the coupons already due and of the said coupons which are to fall due the sum of , bonds, securities, choses in action of the value upon the face of them of , but of the market value of , and lands the title to which was vested in them by the act of January 6, 1855, and which has not been divested by subsequent conveyance or contract of conveyance.

Thirdly. It is further ordered and decreed that the said The Trustees of the Internal-Improvement Fund, hold subject to the payment of the principal of said bonds when they shall fall due the sum of and bonds, securities, and choses in action amounting in value,
578 upon the face of them to , but of the market value of , said money, and said bonds and choses in action being part of the sinking fund provided by the said act of January 6, 1855, for the payment of said bonds, and which said sinking fund is to be augmented semi-annually by the amount of one-half of one per cent. on the amount of said bonds.

Fourthly. It is further ordered and decreed that the said trustees do within thirty days from the date of this decree exercise the power conferred upon them by the second section of said act of 1855, by investing (pro rata) of all the assets appertaining to said sinking fund in the bonds of the Florida Railroad Company, held by the said Francis Vose (that is to say one hundred and ninety-five), by delivering to said Vose all of said assets applicable to the payment of the said bonds held by him; said assets where the same consist of securities, bonds, or other choses in action, to be valued by two arbitrators, one to be selected by the said Francis Vose, the other by the treasurer of the said The Trustees, etc., and in case of disagreement between them, the
579 said arbitrators to call in an umpire to be selected by them, and to take from said Vose in exchange for said assets bonds of the Florida Railroad Company to the full amount of the same so valued as aforesaid, and that semi-annually, within ten days after the receipt of the same, the said trustees do in like manner invest the said amount of one-half of one per cent. to be paid by the said Florida Railroad Company to the said sinking fund, until the said, the amounts so paid to the said Francis Vose, with interest thereon at seven per cent. per annum compounded, shall amount to the entire principal of his said bonds, or until the said Francis Vose shall have been otherwise paid under this decree.

Fifthly. It is further ordered and decreed that the articles of agree-

ment entered into on the 31st May, 1871, by and between The Trustees of the Internal-Improvement Fund of Florida, party of the first part, and the Jacksonville, Pensacola, and Mobile Railroad Company, party of the second part, of which the following is a copy:

580 (Copy.)

Articles of agreement entered into by and between The Trustees of the Internal-Improvement Fund of the State of Florida, created by virtue of an act entitled "An act to provide for and encourage a liberal system of improvement in this State," approved January 6, A. D. 1855, the party of the first part, and the Jacksonville, Pensacola and Mobile Railroad Company, a corporation created by the laws of the State of Florida, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants hereinafter set forth and agreed to be performed by the said party of the second part, and of the sum of five dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does hereby covenant and agree to convey to the said party of the second part all of the lands held by them in trust, or which may hereafter be held by them in trust, under and by virtue of an act to encourage a liberal system of internal improvement in this State, approved January 6, 1855, and all the acts amendatory
581 thereto as set forth and specified in the act or acts aforesaid (excepting the lands that have been heretofore conveyed and contracted to be conveyed, to the Southern Inland Navigation and Improvement Company by the said trustees, and the land contracted to be conveyed to Hubbard L. Hart, and the land granted by an act of the legislature of the State of Florida to the Aquatic and Tropical Plant Propagating Company not heretofore legally conveyed and contracted to be conveyed, by the said trustees to any person or persons, corporation or corporations, subject to all the terms, conditions, and restrictions of any such contract or contracts entered into by the said trustees, with any person or persons, corporation or corporations, excepting such corporations or persons as are hereinbefore especially excepted therefrom, the said party of the second part promising and agreeing to perform with any such person or persons, corporation or corporations, the agreements as made and entered into by the said parties of the first part, and to dispose of the said lands with the view of their settlement, cultivation, and drainage according to the
582 spirit of section sixteen of the aforesaid act, approved January 6, A. D. 1855, and the act of granting the swamp and overflowed land grant of 1850.

And the said parties of the second part, in consideration thereof, do hereby covenant and agree with the said party of the first part to satisfy and pay all the existing outstanding liabilities of any kind and nature that constitute a legal lien upon the said Internal-Improvement Fund, and to cancel and surrender all evidence of such legal liabilities to the said parties of the first part; and the said party of the second part does further covenant and agree to pay the sum of one hundred thousand dollars to the said party of the first part for the benefit of the said Internal-Improvement Fund, and further to complete a line of railroad from Jacksonville, Florida, to Mobile, Alabama, by extending said railroad from Quincy (its present terminus) through the counties of West Florida to Mobile aforesaid, said railroad to be in all respects a first-class railroad, and to be completed within five years from this

589 FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal-Improvement Fund of Florida et al.

The petition of the Peas Creek Immigrant and Agricultural Company praying among other things to be made a party to this cause coming on to be heard; and, it appearing to the satisfaction of the court that the said petitioner, a corporation of the State of Florida, has interest in the subject-matter of this cause and in the Internal-Improvement Fund, on motion of D. P. Holland, solicitor for said corporation, it is ordered that the said Peas Creek Immigrant and Agricultural Company, a corporation created by and existing under the laws of Florida, be made a party to this cause in equity.

Done in open court this 1st day of June, A. D. 1872.

PHILIP FRAZER, *Judge.*

590 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida et al.

This cause came on to be heard on bill, exhibits, answer, despositions, and master's report.

Whereupon it is ordered and decreed that the complainant, Francis Vose, is the holder of one hundred and ninety-five bonds of the Florida Railroad Company, issued under the provisions of the act of January 6, 1855, entitled, An act to provide for and encourage a liberal system of Internal-Improvement in this State; and there is now owing to him two hundred thousand dollars and upwards upon the coupons of said bonds which have already fallen due: That Wm. H. Wagner is the owner of twelve bonds of the said Florida Railroad Company; and that there is now owing to him seven thousand four hundred and fifty-five dollars, upon the coupons of said bonds which have already fallen due: That Frank W. Webster is the holder of four coupons amounting to one hun-
591 dred and forty dollars: That W. T. Webster is the holder of one coupon for thirty-five dollars: That S. J. Trumbull, trustee, is the holder of seven coupons calling for one hundred and ninety-nine dollars and fifty cents: That W. J. Hines, trustee, is the holder of thirty-two coupons calling for eight hundred and thirty-four dollars: That A. F. Finlayson is the holder of eighteen coupons calling for six hundred and thirty dollars; all of said last-mentioned coupons being due and unpaid, and being coupons of bonds issued by the Pensacola and Georgia Railroad Company. That G. A. Huling is the holder of sixteen coupons of the bonds of the Florida Atlantic and Gulf Central Railroad Company, calling for five hundred and sixty dollars. That W. S. Cowardin is the holder of fifteen coupons of bonds issued by the said Florida Railroad Company, and calling for five hundred and twenty-five dollars: That J. J. McNish and Co. are the holders of five coupons of bonds issued by the Tallahassee Railroad Company calling for thirty-five dollars, and nineteen coupons of the said Pensacola and Georgia Railroad
592 Company, calling for four hundred and sixty-nine dollars, all of which said last named coupons are due and unpaid, and all of which bonds were issued under the provisions of the act of 1855.

Secondly. It is further ordered and decreed that the securities be-

longing to the sinking fund provided by said act of 1855, and now held by A. Doggett, esq., receiver, be sold by him at public outcry in the city of Jacksonville, upon twenty days' notice, to be given by publication through one newspaper in the said city of Jacksonville, and another in the city of Tallahassee; and that the proceeds of said sale be invested in the bonds so held by the said Francis Vose and the said Wm. H. Wagner in the proportion of one hundred and ninety-five to twelve.

Thirdly. It is further ordered and decreed that the said receiver shall have power and authority to demand and receive all moneys which may be already due or which may hereafter become due to the said Internal-Improvement Fund of Florida, whether by the purchasers and present owners of the railroads which have been sold under the
593 provisions of the said act of 1855, or by any person or body corporate whatsoever. And that it shall be competent for him to make any person or body corporate who shall contest the validity of any claim which he may assert by virtue of this decree a party defendant to this suit, for the purpose of enforcing the collection of such claim should the same be adjudged valid; and whenever any moneys shall come into the hands of said receiver under the provisions of this clause of this decree, it shall be his duty, and he is hereby instructed and empowered to invest the same in the bonds of the said railroad companies issued under the provisions of the said act of 1855, in manner and form and in the ratio set out in the second clause of this decree.

Fourthly. It is ordered and decreed that this case be referred to A. Doggett, esq., master, etc., for further investigation and report to this court under the order of reference made at the last term. But more especially to call for and audit all coupons which may be held by
594 persons asserting a lien for the payment of the same against the said the Internal-Improvement Fund, the said master to give due notice to all parties in interest, of the time and place when lists of coupons which may be submitted to him shall be open to investigation, allowing to all such persons the opportunity to object to the certified approval of said master, upon grounds to be stated in writing, requiring the production, when necessary and called for, of all coupons, the lien of which shall be thus contested, to hear the parties submitting and contesting the same, and to report his decision thereon to this court at least thirty days before the next term thereafter; to which said decision either party may except under the ordinary rules of chancery practice, and that no coupons shall be paid by the Trustees of the Internal-Improvement Fund except under the order of this court.

Fifthly. It is further ordered and decreed that the injunction hitherto granted in this cause be continued in full force and effect, and that the appointment of receiver hitherto made be continued for the purposes of that appointment.

595 Dec. 18, 1872.

W. B. WOODS, *Judge.*

FRANCIS VOSE, COMPLAINANT,
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al., defendants.

It is ordered, adjudged, and decreed that the above entitled cause be referred to A. Doggett, esq., master, etc., for further investigation and

report, more especially under the fourth clause of the decree of this court rendered on December 28, 1872. That he forthwith give notice by circular letter to all persons who have registered coupons with him under the provisions of said decree, that they shall place in his custody and keeping the said coupons so registered, with a view to their payment in accordance with the established rule of priority of date. That he forthwith give notice by publication to all persons who may hold coupons of bonds claiming a lien upon the said The In-
596 ternal-Improvement Fund, and which have not yet been presented, that they shall present the same to him for examination and registry before the first day of April, A. D. 1874, and that if they remain longer in default they shall be debarred from participating in the benefits of the decrees rendered by this court in this cause.

That said master give due notice of the times and places when he will hold all coupons, whether such as have already been registered or such as may thereafter be registered and placed in his custody, open for the inspection of any party in interest, allowing to such party full opportunity to move that any such coupons be rejected upon the ground that they have no just claim upon the said fund, such motion to be made upon petition setting out such facts as shall indicate cause for reasonable suspicion. That said master shall enter the cases so made upon a special docket to be kept by him for that purpose. That he shall give due notice to the parties thereto of the time and place when he will receive testimony and hear argument touching the issues made
597 thereon, whether they be issues of law or fact. That he shall have the power to subject any holder of such coupons so challenged, to examination under oath as to his title to the same, as to the person from whom he obtained the same and as to any matter whatsoever, touching the validity of the same. That he shall apply for and receive from the Trustees of the Internal-Improvement Fund and the officers of State, all books and records relating to the issue of bonds which bore such coupons, or to the payment of the same. That he shall demand from the officers of any railroad company, or any other person whatsoever, any and all books or records relating to the same subject-matters, and shall have power to invoke at any time the process of this court, to enforce the production of any such book or record. That such books or records shall be held open for inspection and for reference on the trial of the cases which may be made and docketed in manner and form, as herein provided for.

That after hearing the said causes so made the said master
598 shall deliver his decision in writing, from which decision either party may enter an appeal to this court within thirty days from the rendition thereof, and it shall be duty of the said master to report the said cause with all of the testimony and his action thereon. In default of such appeal his said decision shall be final and conclusive.

(2.) It is further ordered, adjudged and decreed that on the 1st day of July 1874, the said master, shall submit to either judge of this court, a statement of the balance of moneys which may be at that date in his hands, produced by the decrees in this cause, which have already been rendered, and applicable to the payment of said coupons; and also a statement of coupons then in his custody, which from their priority, shall be entitled to said money, and it shall be competent for the said judge to direct the payment of the same.

(3.) It is further ordered and decreed that the said master, shall cancel all coupons now in his custody, which have been paid, and all

coupons which he shall hereafter pay as they shall be paid, keeping an accurate account of the same, to be supported by the cancelled coupons themselves as vouchers.

599 (4.) It is further ordered, adjudged and decreed that the said master shall enquire and report from the testimony already taken in this cause, and from testimony hereafter to be taken if necesrary, the amount which should be decreed against any person defendant to this cause, for damages resulting to said complainant and others, from any acts violative of the trusts created by the statute of January 6, 1855, and that his report be filed with the clerk of this court, at least ninety days before the next term thereof, and that immediate notice of such filing be given to such party defendant.

(5.) It is further ordered, adjudged and decreed that the contracts or agreements entered into by The Trustees of the Internal-Improvement Fund, with the corporation known as the Southern Inland and Navigation and Improvement Company be rescinded, and the same are hereby declared to be null and void, and the lands undertaken to be conveyed or contracted to be conveyed, shall be restored to the said Internal-Improvement Fund, and be subjected to sale by the agents appointed by decree of this court rendered during the term in accordance with the provisions of said decree.

W. B. WOODS, *Judge*.

600 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND et al.

This cause having been called in its regular order for hearing, the said complainant, being represented by his solicitors of record, and the said defendants by Attorney-General Wm. A. Cocke, by consent of the said parties, through their said solicitors, it is ordered, adjudged and decreed:

(1.) That for the purpose of producing from the lands of the Internal-Improvement Fund of the State of Florida, the amount of money necessary to pay the indebtedness established by the former decree of this court in said cause as having a lien upon the same under the provisions of the act of January 6, 1855, known as the Internal-Improvement Act, Marcellus A. Williams, Samuel A. Swann and Hugh A. Corley, heretofore appointed by the said The Trustees of the Internal-Improvement Fund of the State of Florida to be their agents for the sale of the lands be authorized and empowered to sell the same in such amounts and at such prices as will, in the exercise
601 of their discretion, most rapidly produce the requisite means to discharge the said indebtedness and free the said landed fund from the said lien, always responsible for all of their acts in the exercise of this discretionary power, not simply to the said trustees, but directly and at all times, to this court itself, under this decree to be enjoined at any time by its order, to be liable to immediate punishment for contempt if they or either of them shall violate such order or in anywise prevent or prostitute the trust thus reposed in them to any other end than the one contemplated by this decree, that end being not simply the enforcement of said decree to the legitimate payment of said indebtedness, but also the protection of said landed fund for the benefit of the State of Florida and all persons who may be ultimately interested therein.

(2.) It is further ordered, adjudged, and decreed, that the said agents shall pay over to the said the trustees the moneys that may be received by them from the sales of said lands, as they shall be made, reporting simultaneously with such payments to Aristides Doggett, esq., the full and precise amount of the same, with
602 a detailed statement of the lands which may have been sold to produce the said moneys. And it shall be thereupon the duty of the said trustees to turn over the said moneys to the said Aristides Doggett, esq., receiver, monthly, with a monthly settlement of account, as directed by the provisions of decree of this court, and it shall be the duty of the said Aristides Doggett, esq., to submit monthly to the said trustees a statement of the said detailed reports of sales as they shall be made to him for the examination of the said the trustees, whose right and duty it shall be to arrest the proceedings of said agents, if in their judgment they, the said agents, are so exercising the powers invested in them by this decree as to jeopardise, or in anywise sacrifice the interests of the State of Florida in the said fund. And it shall be the duty of the said receiver, immediately upon such action by said trustees, to proceed, in his character of master and examiner under previous decrees of this court, to take testimony touching the issue so formed and to report the same with his conclusions thereon to either judge of this court instanter, whether in term-time or in vacation, that such action may be taken either to overrule
603 such action of said trustees, or to confirm the same, and to inflict such penalty upon the said agents as may be deemed just and proper, who to that end are to be regarded, in their discharge of the trust created in them by this decree, as the officers of this court.

(3.) That it shall be the right of each and all persons who have made themselves parties to this cause to lodge complaints with the said master and receiver against the said agents in the form of a petition verified by affidavit, and thereupon it shall become the duty of the said master, after giving proper notice to the said agents, to take testimony upon issue formed on said petition reporting instanter the same with his conclusions thereon to any judge of this court, whether in term time or vacation, that action may be taken thereon as provided by the second clause of this decree.

(4.) That should it become necessary for this court by either of its judges, whether in term-time or vacation, to discharge the said agents, it shall be competent for this court, by either of its judges, to appoint another agent, or other agents to carry out the provisions of this
604 decree, and that such appointment shall be made at any time, whether during a term of court, or in vacation, upon suggestion of the trustees and upon such notice as the said chancellor may see proper to give to the parties to this suit if it be held necessary by him to give such notice.

(5.) That it shall be the duty of said agents to bring to the notice of the said master all acts of encroachment or trespass upon the lands belonging to said trust fund by whomsoever committed: that it shall be the duty of said master to proceed to take testimony in regard to such alleged encroachment or trespass, after proper notice given to the person or persons charged with the same, and to report his conclusions on said testimony with the testimony itself, to this court, instanter, that either judge thereof, whether in term-time or vacation, may take such action in the premises as may be meet and proper.

(6.) That all legitimate expenditures incurred by the said agents in the discharge of their trust, together with a reasonable compensation

for the services so rendered by themselves shall be deducted
the said moneys so to be realized from the sales of the sa
605 lands before the same shall be paid over to the said the trustees, as also shall legitimate expenditures be retained by the said the trustees before turning over the same to the said, the receiver, but all such charges shall be made to appear with distinctness in the returns made by the said trustees to said receiver, and in the monthly reports of said receiver shall be subject to exception by any party in interest and shall be in all cases subject to the final approval of the court.

W. B. WOODS, *Judge.*

606 FRANCIS VOSE, COMPLAINANT,
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND, et al. defendants.

It appearing to the court that a fund has been placed in the hands of the receiver appointed in said cause produced under the decree rendered in said cause, and it further appearing that said decrees including the decrees which have been rendered at the present term have been reached through a single complainant and his solicitors, it is ordered that the sum of five hundred dollars be paid by said receiver to H. Bisbee, esq., jr., and four thousand five hundred dollars to Jackson, Lawton and Bassenger, the solicitors of Francis Vose, complainant.

Dec. 5, 1873.

W. B. WOODS, *Judge.*

607 FRANCIS VOSE,
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND of the State of Florida and others.

This cause coming on to be heard on motion on behalf of the complainant for an attachment against the said trustees, defendants, as for a contempt for divers alleged violations of the injunction and decrees heretofore made in the cause; upon a motion on the part of said trustees for a rehearing of the consent decree made on the 4th day of December, 1873, and a dissolution of the injunction and restraining orders in the cause, and upon other matters of which due notice had been given.

And it appearing to the court that the said trustees were not guilty of a contempt as alleged against them, but that, nevertheless, the agents heretofore appointed for effecting sales of land belonging to said Internal-Improvement Fund are embarrassed by the refusal of the trustees to execute deeds therefor in certain cases; the said trustees mean-
608 time alleging that the sales for which they refused to give deeds were not judicious and expedient and not in accordance with the rules prescribed by them with regard to sales; and it further appearing to the court that no sufficient ground exists for a rehearing of said consent decree (although the said trustees were not barred by the consent thereto of their attorney and solicitor) and that no sufficient reason exists for dissolving the injunction heretofore granted in said cause, so far as the same is still in force, but that some further directions are necessary in order to facilitate the sale and disposition of lands by said agents for the purposes mentioned in said former decree.

It is therefore, on this eighteenth day of May, A. D. 1875, ordered, adjudged, and decreed:

First. That the motion for attachment against the said trustees be denied.

Secondly. That the said motion for rehearing be denied.

Thirdly. That the said motion for a dissolution of the injunction in this cause be denied.

Fourthly. That the motion for the appointment of a receiver,
609 with further powers, be denied.

Fifthly. That hereafter whenever the said agents for sale of lands, shall report any such sale or sales to the said trustees under the former decree of this court, and the said trustees shall refuse for any cause to recognize such sale or sales, or to give deeds or conveyances for the lands sold, the matter shall be reported by the said agents to this court for order and direction in the premises, and notice thereof shall be given to the said trustees in order that both parties may be heard either by the court in term time or by a judge at chambers in vacation, and after hearing the said agents and the said trustees (if they desire to be heard thereon), in relation to the expediency and propriety of such sale or sales, such order will be made thereon as to the court or the judge hearing the same shall seem right and proper, and if the sale be approved, it shall be the duty of the said trustees to make the proper and necessary conveyances to carry out the said sale or sales.

610 And whereas the master and receiver Aristides Doggett, esquire, reports that he has certain moneys in his hands which he desires should be in some manner, by distribution, payment, or otherwise, disposed of by order of the court; and it appearing by his report that a large number of coupons have been presented to him under the previous decree of the court, some of which are not duly verified as required by said decree, and others have been decided by him not to be entitled to any part of the moneys belonging to said trust fund; it is therefore further ordered that any balance of moneys which may now remain in his hands, after deducting costs, expenses, and charges thereon allowed by the court, be distributed and paid pro rata in the following manner, that is to say:

Taking as a basis of distribution the whole amount of coupons which have been presented to and registered by him, the said master and receiver, the holders of such coupons now due as have been duly verified, and against which no exceptions have been taken (or which exceptions have been overruled) without regard to the time when they severally matured, shall be paid their proportionate share of said
611 balance. The share of said balance of moneys applicable to such coupons now due as have not been duly verified, or to the allowance of which exceptions have been taken, or where the time for filing exceptions thereto has not expired, shall be retained by the said receiver until the said several obstacles to their allowance and payment shall have been removed, when payment thereof may be made.

The above payments to be made through the solicitors of record, where the parties are represented by solicitors.

JOSEPH P. BRADLEY, JR.

612 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et als.

It is ordered that Aristides Doggett, esq., master, give due notice to all persons holding coupons of bonds issued by railroad companies under the provisions of the act of January 6, 1855, who have not heretofore produced and verified the same under the 13th clause of the decree rendered Dec. 7th, 1871, that the time for such production and verification has by order of this court hereby given been extended to the first day of December next; and that the said coupons when produced, shall be subject to the provisions of all decrees of this court of subsequent date.

It is further ordered that in cases where coupons may have been heretofore produced to the said master without verification, he shall give notice to the holders thereof to verify the same in accordance with said decree of Dec. 7th, 1871, or that the said coupons will be with'eld or withdrawn from the register May 18th, 1875.

J. P. BRADLEY, JR.

613 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida.

On motion of Messrs. Fleming & Daniel, of counsel for John S. Sammis and others, holders of coupons of bonds filed with the master in this cause, and it appearing that no opportunity has been given to said holders of coupons to except before said master to his report filed on the 8th day of May, 1875, it is ordered that said report be taken from the files and be recommitted to said master for such proceedings as may be in conformity with the rules and regulations controlling the practice of this court, respecting exceptions thereto.

J. P. BRADLEY, JR.

MAY 18TH, 1875.

614 FRANCIS VOSE, COMPLAINANT,
vs.
MARCELLUS L. STEARNS ET AL., TRUSTEES of the Internal-Improvement Fund and others, defendants.

MAY 18TH, 1875.

On motion of the Southern Inland Navigation and Improvement Company, by D. P. Holland, its solicitor, leave is granted to file the petition of said corporation praying that so much of the decree of this court heretofore rendered on the 4th of December, 1873, as relates to the said company and its contract or agreements with the said Trustees of the Internal-Improvement Fund be vacated and set aside.

And it is ordered that the complainant and the trustees, defendants in this cause, do show cause at the next term of this court why the prayers of said company prayed for should not be granted; and let notice of this order and a copy of said petition be served on the defendants in this suit, The Trustees of the Internal-Improvement Fund, and

on Francis Vose, the complainant, and any other parties interested therein.

J. P. BRADLEY, *J.*

615 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

On motion of A. Doggett, receiver, in the above-entitled cause, it is ordered that the moneys now in the hands of said receiver's or which may hereafter come into his hands, be deposited by said receiver in the Merchant's National Bank of the city of Savannah, the said bank being a designated depository of the United States.

PHILIP FRAZER, *Judge.*

JACKSONVILLE, *May* 19, 1875.

616 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEMENT Fund of Florida.

Now, on this day comes Bradley Martin, by Charles P. Cooper, his solicitor, and also comes Francis Vose, by Hon. J. J. Finly, his solicitor, and it being made to appear to the satisfaction of the court that said Bradley Martin has become a party to said cause, by filing coupons of the late Pensacola and Georgia Railroad bonds with Aristides Doggett, esq., master and receiver of this court in said cause, under and by virtue of a decree of this court dated December 4th, 1873:

On motion of the said Charles P. Cooper, esq., solicitor as aforesaid, for an order or decree of this court, instructing said master and receiver to charge the amount of five thousand dollars to said Francis Vose hitherto paid to the solicitors of said Francis Vose by said master and receiver under and by virtue of a decree to that effect rendered by Hon. W. B. Woods, judge of said circuit court, on
617 the fifth day of December, 1873, and that the said amount be deducted from any sum which may have been or which may be found due the said Francis Vose by the said master and receiver on the amount of coupons filed by him with said master and receiver on an account taken and pro rata distribution made or to be made among coupon-holders filed or to be filed as aforesaid, in accordance with a decree of distribution in the premises made by the Hon. Joseph P. Bradley, associate justice of the Supreme Court of the United States, judge presiding in the said circuit court, May 18, 1875.

It is considered, ordered, adjudged, and decreed that said motion be granted and that the said master and receiver, Aristides Doggett, be and he is hereby instructed and required to charge the said amount of five thousand dollars to the said Francis Vose as aforesaid and to deduct it from any amount found to be due him, when distribution shall be made as aforesaid under and by virtue of said decree of distribution of 18th May, 1875, and that said debit to Francis Vose, or deduc-
618 tion from his distributive share of moneys on coupons in the hands of said master and receiver as aforesaid, is to be made of the date of the payment of said five thousand dollars to the solicitors of said Francis Vose as aforesaid.

MAY 25, 1875.

PHILIP FRAZER, *Judge.*

619 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEMENT Fund of Florida et al.

Upon petition of Williams, Swann, and Corley, agents for sale of lands:

The petition of said agents having been heard as well as the objections thereto by The Trustees of the Internal-Improvement Fund of the State of Florida, represented by James M. Baker, esq., their solicitor, it is ordered by the court that the said trustees be directed to make the proper and necessary deeds of conveyance to carry out the sales of land heretofore made by said agents in all cases where such sales were made for the prices and on the terms adopted by said trustees for the sale of lands belonging to the Internal-Improvement Fund.

June 1, 1875.

PHILIP FRAZER, *Judge.*

620 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEMENT Fund et al.

The petition of E. A. Lorton respectfully shows that she is the owner of one bond of the Pensacola and Georgia Railroad Company for the sum of two hundred and fifty dollars ($250.00), designated by the number twenty-seven (27), bearing date the first day of January, A. D. 1860, and payable on the first day of January, 1880; and that she is also the owner of one bond of the Tallahassee Railroad Company, designated by the number thirty-two (32), for two hundred dollars ($200), bearing date the first day of July, A. D. 1856, and payable on the first day of January, 1876; that both of said bonds are coupon bonds issued by the said companies in accordance with the provisions of the internal improvement act of January 6th, 1855, and here and now brought into court and held subject to inspection.

Your petitioner further shows that, being a female and residing at a point distant from the State of Florida, she was not aware, until
621 recently informed, that any action had been taken in this honorable court looking to the collection from the Internal-Improvement Fund of said State of certain amounts due upon the past-due coupons of said bonds to which there are past-due coupons now attached from July 1, 1865, to July 1, 1875, both inclusive; nor did your petitioner know that any order had been made or published providing for the production and registration of the said coupons or any part of them.

Wherefore your petitioner humbly prays that she may be now permitted to produce the said past-due coupons from July 1st, 1865, to January 1st, 1869, both inclusive, before the master appointed in the above-entitled cause for that purpose; and that inasmuch as the said coupons will be submitted to the said master attached to the said bonds, the oath of verification shall not be required of her, the same being unnecessary, and that the said coupons may be admitted to registration in accordance with the other orders heretofore made in the said cause.

JACKSON, LAWTON & BASSENGER,
Solicitors for Petitioner.

622 In open court, Dec. 14, 1875.

On reading the foregoing petition, it is ordered that the prayer thereof be granted.

PHILIP FRAZER, *Judge.*

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

This cause coming on to be heard this twenty-fourth day of Dec., A. D. 1875, upon petition of Jacob Burkhim, praying that he may be allowed to file, prove and register, before A. Doggett, esq., fifty-six coupons of A. G. Central R. R. and the Pensacola and G. R. R., of which he is the owner, it is ordered and decreed, that the petition be granted with the proviso, that any parties properly interested in the above entitled suit, are hereby permitted to appear before said master for the purpose of contesting the validity of said coupons.

Dec. 24th, 1875.

PHILIP FRAZER, *Judge.*

623 FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal-Improvement Fund et al.

On motion of complainant by S. Y. Finly, his solicitor, and after hearing counsel, it is ordered that the receiver, Aristides Doggett, appointed and acting in said cause, do pay to said complainant Francis Vose in person, his share of the money in the hands of said receiver, now subject to distribution under the order made at this term of the court.

PHILIP FRAZER, *Judge.*

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund and others.

On hearing the petition of John Townsend, for leave to prove coupons in the cause above stated, and on proof of the facts therein stated, it is ordered that the said petitioner have leave to prove his said coupons, before the special master in this cause, and that to that
624 end, the time for such proof be extended to the 15th day of February, 1876.

January 10th, 1876.

PHILIP FRAZER, *Judge.*

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

On reading and filing the petition filed by A. Doggett, master, pro

hac vice, in relation to the loss by fire of the various books in which the coupons have heretofore been registered under the several orders or decrees of this court, and the said master, having prayed that an order be made for the re registration of said coupons, it is ordered that the said master do proceed with all possible dispatch to register said coupons in conformity with the various orders, or decrees, heretofore made in relation thereto, in said cause.

January 13, 1875.

PHILIP FRAZER, *Judge.*

625 FRANCIS VOSE *vs.* HARRISON REED ET AL.

On reading and filing the petition of James H. Paine, John Varnum, and Francis Vose, praying for a distribution of monies in the hands of the receiver in this cause, ordered, that the order made in this cause by Mr. Justice Bradley, on the 18th day of May, A. D. 1875, for the distribution of funds in the hands of the receiver be, and the same is hereby, extended to authorize the distribution of monies now in the hands of the said receiver, said distribution to be made in strict conformity with the terms of said order.

Dated January 13, 1876.

PHILIP FRAZER, *Judge.*

626 The Internal-Improvement Fund of Florida, to Williams, Swann, and Comey, agents, &c., Dr.

1875.	To com's on sales of 4,252 92 acres of land for $3,820.81 as per reports to the receiver @ 10 %	$382 08	
	" com's on sales of 2,145.29 acres sold by trustees thro' agency of W. S. & C. not reported to receiver, for $2,643.61 @ 10 %	264 36	
Jan'y 4.	" com's on entry by Florida Improvement Company paid over to trustees, in order to get deed	12 83	
	Total commissions		$659 27
1874.	9. To expenses of Samuel A. Swann from June 7 to Aug. 15, 1874, in N. Y., Michigan, and Canada to negotiate sales	375 00	
"	10. " 1 year's office rent in Jacksonville, secured for use of agents	300 00	
"	" pro rata rent of office in Fernandina	100 00	
Dec. 15.	2. " trav. exp. S. A. Swann to & from Jacksonville to attend court	18 00	
1875.			
Feb'y 20.	3. " trav. exp. S. A. Swann to & from Jacksonville to meet trustees	11 25	
June 3.	4. " trav. exp. S. A. Swann to & from Jacksonville to attend court	8 50	
Sept. 27.	5. " paid for certified copies of orders of court	2 80	

		6. " expressage and postal orders transmitting money to Tallahassee	2 35	
		7. " cash paid for telegraphic despatches	15 77	
627	Dec. 31.	8. To rent of office in Jacksonville, from June 22d to date	63 00	
		Total expenses		896 67
				1,555 94

Ordered that the commissions amounting $659.27 and the items Nos. 2, 3, 4, 5, 6 & 7, be paid to the am't of 717.94 and that items 8, 9, & 10 be stricken out.

Jan. 19, 1876.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND OF FLORIDA.

The bill of expenses and compensation of Williams, Swann, and Corley, agents for the sale of lands accompanying their report for the year 1875, having been on motion of F. Vose referred to A. Doggett, master, and the said master having this day filed his report, and the said report having been excepted to by the said Francis Vose, and the same coming on this day for a hearing, J. B. C. Drew, esq. representing the said Vose, and Fleming and Daniel appearing for the said
628 Williams, Swann, and Corley, and after argument by counsel and consideration by the court, it is ordered that the first item, commissions as stated in said bill, to wit, six hundred and fifty-nine $\frac{27}{100}$ dollars be allowed, as also items numbered 2, 3, 4, 5, 6, & 7, amounting to the sum of fifty-eight $\frac{67}{100}$ dollars be also allowed, and the other items be, and the same are hereby, disallowed.

It is further ordered that the said receiver do pay to the said Williams, Swann, and Corley, out of any moneys in his hands as receiver in this cause, not otherwise appropriated, the sum of seven hundred and seventeen dollars and ninety-four cents ($717.94) the same being amount of their bill as allowed by this court, the said payment to be made to them or to their attorneys; and it is further ordered that the cost of this reference as appears by the master's bill, to wit, the sum of sixteen $\frac{89}{100}$ dollars, the fees of A. Doggett, master, be allowed and paid out of the same fund.

January 19th, 1876.

PHILIP FRAZER, *Judge.*

629 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND et al.

Marcellus A. Williams, Samuel A. Swann, and Hugh A. Corley, heretofore appointed under a decree of said circuit court of December, A. D. 1873, agents for the sale of lands belonging to the Internal-Improvement Fund, having by their petition this day filed, asked to be relieved

from further discharge of their duties under said decree, and no ob... tion being made to the granting of the prayer of said petitioners;

It is therefore ordered that the said petitioners be and are hereby relieved from the further discharge of their duties as agents for sale of said lands under said decree, and their appointment as such agents revoked.

January 31, 1876.

PHILIP FRAZER, *Judge.*

630 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND OF FLA. et al.

Upon the petition of Francis Vose *vs.* Jackson, Lawton and Bassinger, solicitors in said cause, praying that the defendant be ordered to pay certain monies and turn over certain papers and bonds to the petitioner: Upon a consideration of the facts disclosed by the answer and affidavits the court is satisfied that the respondents have not been guilty of any misconduct which calls for the exercise of the powers of the court, or which brings the matter within its jurisdiction. There is no reason to suppose that they have not acted in good faith, and whether their claims to the entire amount demanded be valid or not, and for the payment of which it is claimed they have a lien upon the amount and bonds demanded to be paid and restored it is not for the court to decide. The case is one in which parties should be left to the usual remedies where the questions of law and fact which are mooted be-
631 tween them can be more satisfactorily settled than they can be in a summary proceeding.

It is, therefore, upon due consideration, ordered, adjudged, and decreed that said petition be dismissed with costs.

JAS. W. LOCKE, *Judge.*

JACKSONVILLE, *Dec.* 16, 1876.

FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND OF FLORIDA.

Motion of Geo. W. Williams to be admitted as a party to this suit with permission to file answer and cross-bill.

The party to this motion not showing therein that he has any interest in the cause between the said Francis Vose and the Trustees of the Int. Imp. Fund, it is ordered that said motion be denied without prejudice.

JAS. W. LOCKE, *Judge.*

JACKSONVILLE, *Dec.* 2, 1876.

632 FRANCIS VOSE
vs.
THE INTERNAL IMPROVEMENT FUND ET AL.

On motion of C. P. Cooper, esq., solicitor representing Bradley Martin, Charles Du Bignon, Wm. H. Wagner, and James M., and H. J. Baker, esq., solicitors representing D. A. Davis, M. L. Holmes, B. S. Gaither, Robert J. McDowell, Archibald Baker, S. O. B. Wilson, James

M. Baker, Burbank and Gallaher, and A. R. Meek representing James H. Paine, all of which named parties so represented are the owners of certain coupons now registered with the master and receiver in this case, and James B. C. Drew, solicitor representing the complainant, Francis Vose, consenting thereto without prejudice to the right of the said Vose to further contest the legality of all the said coupons, and also to obtain the decision of this court as to whether the said coupons, as well as all others of a similar class, may be paid by the railroad companies issuing them, or those companies who have succeeded to their property and effects:

633 Ordered that the distributive pro rata share of the monies now in the hands of the receiver, due upon the said coupons held by the said parties, to wit, Bradley Martin, Charles Du Bignon, Wm. H. Wagner, D. A. Davis, M. L. Holmes, B. S. Gaither, Robert I. McDowell, Archibald Baker, S. O. B. Wilson, James M. Baker, Burbank and Gallaher, James H. Paine and Francis Vose, said distribution of monies to include such sum of money as may be received hereafter by the said receiver for the sales of lands for the month of December, to be paid to them by the said receiver, Aristides Doggett, esq., in the manner provided for by a decree of this court made by his honor Mr. Justice Bradley, dated May eighteenth, one thousand eight hundred and seventy-five.

It further appearing to this court that by reason of the loss of the docket and other papers of the master, Aristides Doggett, in the fire that destroyed his office, that much uncertainty exists as to what coupons have or have not been verified, or expected to, and what action has or has not been had by this court upon such exceptions under the former decree of this court: It is further ordered that the said master

634 shall, as soon as possible, procure a book and enter therein a list of all coupons now in his hands, showing the persons who claim the same, the date of their registration with him (as near as possible), the persons or solicitors who presented the same; that the said master shall, after the completion of the said list, notify the persons so having registered coupons, or their solicitors, of that fact by a written or printed notice sent through the U. S. mail to their several residences, and that any of the said parties in interest, within sixty days thereafter, have leave to file exceptions to the said coupons, and that the said exceptions shall be heard and their sufficiency determined in the manner and mode provided for by the decrees heretofore made by this court in this case; that after the distribution provided for in this order, no further distribution of the monies in the hands of the receiver shall be made upon coupons, until the master shall have made his report to this court as to the coupons, properly verified under this order and the former decrees of this court.

And it is further ordered that, in case of any appeal from the decision

635 of the master in the matter of the validity of any coupon registered in accordance herewith, or exceptions thereto, such appeal or exception shall be filed in this court by the first rule day of the next ensuing term after the appeal or exception shall have been taken, and if not so filed at such rule-day shall be held and considered as abandoned, and the master shall proceed in accordance with his decision, as if no appeal or exception had been taken.

Jacksonville, Fla., December 28, 1876.

JAS. W. LOCKE, *Judge.*

636 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

It having been made to appear to the court that the order pronounced by his honor Judge Woods at the December term, 1873, directing the payment from the general fund to Jackson, Lawton, and Bassenger five thousand dollars ($5,000), as extra compensation for their services in bringing such fund into court, and that said direction, through mistake, has not been obeyed, it is now, on motion of the said Jackson, Lawton and Bassenger, ordered that the said receiver do now pay the said sum of money to them, taking their receipt for the same, in accordance with this order.

It being the opinion of the court that it was the intention of Judge Woods not to decree a definite amount to Jackson, L. & B. and H. Bisbee, jr., personally, but as representatives and solicitors of Francis Vose, and on his account and in his behalf, as a contributive amount from the fund in the hands of the master, and a petition being now under consideration covering the entire question of the rights of
637 said Vose against said fund for a portion of expenses and costs incurred, this petition is denied.

Dec. 26, 1876.

J. W. LOCKE. *Judge.*

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida et al.

In the matter of the petition of the complainant, Francis Vose, for payment of certain costs, expenses, &c.

On reading and filing the petition of the complainant, Francis Vose, praying for an allowance of monies out of the fund in the hands of the receiver in this case for certain expenditures of money made solely by him in the payment of solicitors, and certain money, expenses, costs, and fees, the said expenditures having been incurred and paid by him in ascertaining and bringing into court the fund which has been by a decree of this court subjected to pay a certain class of indebted-
638 ness in part held by him, and in part held by a large number of other parties, who have been and still continue to receive the benefits resulting from said decree, and it appearing that said fund and decree was reached through the said Francis Vose as sole complainant—

After hearing arguments of counsel to wit, Harry R. Jackson, esq., and J. B. C. Drew, esq., for the petitioner, and James C. Baker, esq., and C. P. Cooper, esq., in opposition thereto; it appearing to the court that a portion of the said amounts may be properly allowed from said fund: It is ordered that the said petition be referred to A. R. Meek, esq., an attorney of this court, who is hereby appointed master in chancery for this purpose, and who is hereby invested with all the power of a master in chancery under the rules of this court:

First. To inquire and report what and by whom the necessary expenditures have been incurred in bringing the monies already received in this case into this court:

Second. To inquire and report what necessary expenditures have been

made and by whom, in protecting the landed and sinking
639 fund from which this money has been and will be realized.

To enquire and report what personal services have been rendered and by whom rendered in the above work, and the value of said services.

Fourth. To inquire and report what amount of the foregoing expenditures have been charged to the said Francis Vose by the receiver in this case, instead of being paid out of the common fund in his hands.

And it is further ordered that any party claiming an allowance or benefit under this order may do so by filing his claim with the said master; said claim shall be in writing, setting forth in a particular manner, item by item, the amount so claimed, the date of the service rendered or money expended, to whom such money was paid and for what purpose money was paid or service was rendered; and the master shall take proof touching each item contained in such claim,
640 either for or against its allowance, affording full opportunity for argument of counsel, and shall thereupon make his report in writing upon such claim, clearly showing his allowance or disallowance of the said claim or any part thereof; and thirty days before the next December term, shall file said report in the clerk's office of this court; and any party desiring to except to the said report or any part thereof, shall file said exceptions in said clerk's office, on or before the first rule day of said term, and the said report and the exceptions thereto, shall be heard at the same term unless otherwise ordered.

Dec. 29, 1876.

JAS. W. LOCKE, *Judge*.

641 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of the State of Florida and others.

Ordered, upon motion of Francis Vose, by his solicitor, J. B. C. Drew, that the clerk of this court provide a record book in which he shall record all such proceedings, orders, and decrees, already had in this case, or that may hereafter be had, as may be necessary to show the jurisdiction of the court, the regularity of the proceedings and the final action of the court upon any question arising herein, provided that motions, petitions, and interlocutory proceedings shall not be recorded therein at length, but the substance of the matter therein contained shall be stated and the papers on file referred to.

And it is further provided that in event it is found that any original paper is missing from the files, and there is in the possession of any party a duly certified copy thereof, ten days' notice of the de-
642 sire and intention to substitute and record such copy in place of such original, shall be given by the clerk to the parties in interest, and in the absence of objection to such substitution, the clerk shall proceed to record said substituted copy, certifying the same to be recorded from such copy.

That said volume of records shall be fully and carefully indexed, and that all costs incurred in carrying into effect this order, upon being taxed and allowed by the court, shall be paid from any funds at that time in the hands of the master and receiver.

December 28, 1876.

JAS. W. LOCKE, *Judge*.

643 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND OF FLORIDA.

In the matter of the petitions of Seaton Grantland, William H. Wagner, and Charles D. Miller, agent of Hopkins, Dwight and Company, of John Townsend, John Cochran, Edward Trenholm, and Thomas B. Cadrington.

It is considered, ordered, adjudged, and decreed that said petitioners have leave to file and register with Aristides Doggett, esq., master and receiver of the court in said cause, any railroad coupons owned by them contemplated in the orders and decrees of the court hitherto made in the premises; said coupons to be subject to the orders and decrees of the court in said matter hitherto made, and of all orders and decrees to be made by the court in said matter.

Jan'y 3, 1877.

JAS. W. LOCKE, *Judge.*

644 FRANCIS VOSE
vs.
THE TRUSTEES INTERNAL-IMPROVEMENT FUND OF FLORIDA et al.

It appearing to the court that there are outstanding large numbers of coupons that have been improperly issued, or have been paid by the railroad companies issuing the same or by the Trustees of the Internal-Improvement Fund, or are not a lien upon the Internal-Improvement Fund, and there appearing to be some doubt as to what shall constitute a verification under former orders and decrees of the court:

It is ordered that the following interrogatories be, and the same are hereby, ordered to be propounded to all persons who have filed coupons with the master in this cause, or may hereafter file coupons with the said master (except those persons named in the final decree in this cause whose coupons have been adjudged as a lien upon the said fund), the same to be answered in writing and under oath:

645 Interrogatory first. Had or had not the coupons presented by you been cut from the bonds before they came into your possession?

Second. If detached, by whom were they detached?

Third. If detached by you, are the bonds now in your possession?

Fourth. If not in your possession, in whose possession are they?

Fifth. Who is the present owner of the coupons presented by you?

Sixth. From whom were they purchased or received, and when were they purchased or received by you?

Seventh. Have or have not the coupons presented by you been paid by the railroad companies issuing the same or the Trustees of the Internal-Improvement Fund?

Eighth. State all you know concerning the coupons presented by

646 you particularly the different persons who have owned or had possession of the same. If these coupons were detached from bonds issued by the Florida Railroad Company, state, if you know, why they were not surrendered to the Trustees of the Internal-Improvement Fund with the bonds. If coupons were issued by the Atlantic and Gulf Central Railroad Company, were they held by the said company in their

possession after the sale of the said road or detached from bonds never issued by said company.

It is further ordered that the master in this cause do send a printed copy of the foregoing interrogatories to each and every person or their attorney or attorneys, who have filed coupons in this cause, excepting those persons named in the final decree herein with notice to them to file written answers to the same, duly sworn to before some person authorized to administer oaths, and file the same with the said master on on or before the first day of the next December term of this court, and if such answers are not so filed as aforesaid, any party may ap-
647 ply to the said court to have the coupons not so verified under this order cancelled and declared not entitled to be paid out of the fund in the hands of the receiver. Nothing in this order shall prevent any party from filing exceptions to any coupons as provided by the former order and decrees of this court made in this cause, and no coupon shall hereafter be registered until this order is complied with, except by those persons who have been named in the final decree who shall have permission to file their coupons with the master at any time.

This order shall not apply to coupons filed by Jas. M. Baker in person or as attorney.

Jan'y 11, 1877.

JAS. W. LOCKE, *Judge.*

648 FRANCIS VOSE, COMPLAINANT,
vs.
MARCELLUS L. STEARNS ET AL., TRUSTEES of the Internal-Improvement Fund and others, defendants.

Petition of the Southern Inland Navigation and Improvement Co., and order to show cause on said petition.

By consent of counsel for complainant and for the Southern Inland Navigation and Improvement Co., the petitioner, it is ordered that the matter arising on this petition be heard before his honor Justice Bradley at Washington City, on the tenth day of March next.

Ordered, that the clerk transmit by some safe conveyance to Justice Bradley such of the papers in the cause as the respective solicitors for complainant Vose and the petitioner may in writing designate.

Jan'y 11, 1877.

JAS. W. LOCKE, *Judge.*

649 FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED AND OTHERS, DEFENDANTS.

Whereas, a petition was filed in this cause on the 18th day of May, 1875, by the Southern Inland Navigation and Improvement Company praying first that the decree made by the court in this cause on the 4th day of December, 1873, so far as relates to said company be vacated; secondly, that said company have leave to file such pleadings as may be advised by counsel to be necessary for the defence of its interests; and thirdly, for such further order as the court should deem meet and reasonable, and an amendment of said petition was filed by said company on the 2nd day of September, 1876, but without making any addi-

tional prayer, and an answer to said petition was filed by the complainant, verified on the 16th day of February, 1877;

And the parties, by their counsel, having agreed to argue the motion for granting the prayer of said petition before Justice
650 Bradley, at his chambers in the city of Washington, and the same coming on to be heard before the said justice on the 9th day of March, 1877, and being argued by W. G. M. Davis, esquire, on behalf of the said Southern Inland Navigation and Improvement Company in favor of said motion, and by J. B. C. Drew, esquire, on behalf of the complainant against said motion; and the said justice, having advised thereupon, and being of opinion that the said company was duly made a party to the bill of complaint in this cause, and was served with process of subpœna therein, and failed and neglected to appear and answer to the said bill, it is ordered that the said motion and the prayer of said petition be denied, with costs.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the United States and Circuit Justice of the Fifth Circuit.

WASHINGTON, *March* 26, 1877.

651 FRANCIS VOSE
vs.
TRUSTEES INT. IMP. FUND.

On motion of L. W. Spratt, solicitor for John Townsend, J. C. Cochran and E. L. Trenholm, it is ordered that A. Doggett, esq., report what coupons have been proved by the said parties, what the gross fund paid out in expenses, what to dividends, and what the amount in hand, and that he have leave to report special matter.

THOMAS SETTLE, *Judge.*

APRIL 17, 1877.

652 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND et al.

It appearing from the petition of Daniel P. Smith that he is the owner of certain coupons of the F., A. and G. C. Railroad; that Aristides Doggett has been appointed master to report upon coupons of said bonds, and that the said coupons of said Smith have never been filed with said master, it is ordered, adjudged, and decreed that the said Daniel P. Smith be, and he is hereby, granted permission to file said coupons of the F., A. and G. C. Railroad, with Aristides Doggett, master, subject, however, to such orders and decrees as have heretofore been made or rendered in the premises.

THOMAS SETTLE, *Judge.*

653 FRANCIS VOSE
vs.
GEO. F. DREW, GOVERNOR, ET ALS., TRUSTEES of the Internal-Improvement Fund of Florida.

On reading the petition of Walter Gwynn, treasurer of said State, and of the school and seminary funds of said State, it is ordered, the

counsel for complainant appearing and not objecting thereto, that said Walter Gwynn, treasurer, aforesaid, be and is allowed to file with Aristides Doggett, the master in this cause, the coupons of bonds of the Florida Railroad Company held by him as treasurer of said school and seminary funds, the same to be filed subject to such orders and decrees as have heretofore been made herein not conflicting herewith.

Done and ordered in open court, April 13th, A. D. 1877, at Jacksonville.

THOMAS SETTLE, *Judge*.

654 FRANCIS VOSE
vs.
THE TRUSTEES OF INTERNAL-IMPROVEMENT Fund.

On motion of Jackson Lawton, and Bassenger, and J. B. C. Drew, solicitors for complainant, ordered that James M. Baker, esquire, do show cause, on the twenty-fifth day of April, 1877, why certain coupons now in the hands and possession of the said James M. Baker, esquire, which he holds as depository thereof, shall not be delivered to the master herein and cancelled, and that a copy of this order be sent to Calvin B. Dibble.

April 14th, 1877.

THOMAS SETTLE, *Judge*.

655 FRANCIS VOSE
vs.
TRUSTEES INTERNAL-IMPROVEMENT FUND.

Motion of George W. Williams, a holder of a first-mortgage bond of the Pensacola and Georgia Railroad Company, to allow him to become a party to this cause, and to file his answer or cross-bill, or both, in said cause.

After hearing Wilkinson Call, esq., for said motion, and H. R. Jackson, esq., and J. B. C. Drew, esq., in opposition thereto, ordered that said motion be, and the same is hereby, denied, except that the said George W. Williams is allowed to become a party to this suit.

April 28, 1877.

THOMAS SETTLE, *Judge*.

656 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida.

On motion of counsel representing coupon-holders, whose coupons are filed with Hon. Aristides Doggett, master and receiver in said cause, it is ordered, that Harriet V. Cumming, administratrix of the estate of Wallace Cumming, deceased, be permitted to file her answer instanter with said master and receiver, in the matter of the interrogatories addressed to her deceased husband, in lieu of her said husband's answer; and that all other parties whose coupons have already been filed as aforesaid, be granted an extension of ten days' time from the date of this order, to file answers to interrogatories addressed to them, subject in all cases to which this order is applicable, to the orders and decrees of said court heretofore made in the premises.

Jan'y 5, 1878.

THOMAS SETTLE, *Judge*.

657 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INT. IMP'T FUND et al.

On reading and considering the petition of S. A. Smith, senior, C. H. Smith, S. Simkins, R. D. Johnson, G. W. Taylor, Wm. Grosvenor, and M. K. Jessup & Co., it is ordered, that Aristides Doggett, receiver in this cause, do detach from the bonds belonging to said petitioners, now on file with him, as master or receiver, in the case of Anderson and others vs. The Pensacola and Georgia Railroad Co. and others, the coupons thereon, and that he file said coupons with himself, as receiver in this cause, to be treated as other coupons of the same class, subject to the ruling of the court on the master's report, heretofore made.

THOMAS SETTLE, *Judge.*

658 FRANCIS VOSE
vs.
TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund.

And now, upon motion of J. B. C. Drew and J. C. Marcy, it is ordered, that 40 copies of the report of A. R. Meek, esq., commissioner, and testimony accompanying it, be printed, and that the expense of same, as well as clerk's copy of same, be paid out of fund in hands of Aristides Doggett, esq., master and receiver in said above-entitled cause.

January 15, A. D. 1878.

THOMAS SETTLE, *Judge.*

659 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEment Fund et al.

On reading and considering the petition of Carhart and Brothers, it is ordered, that Aristides Doggett, receiver in this cause, do file the coupons of the petitioners (of the Pensacola and Georgia Railroad bonds) with himself, as receiver in this cause, to be treated as other coupons of the same class, subject to the rulings of the court on the master's report, heretofore made.

THOMAS SETTLE, *Judge.*

660 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEment Fund, et al.

This cause came on this day to be further heard upon certain general exceptions to the report of A. Doggett, esq., master, filed in this cause in conformity with the decretal order of his honor, James W. Locke, judge presiding, dated the 28th day of December, A. D, 1876, as to the order of payment of certain of coupons filed with the said master, which said general exceptions were taken and made by the complainant Vose.

And thereupon, upon consideration, the said exceptions having been duly argued by counsel for the respective parties, it is ordered, adjudged, and decreed that the said exceptions be, and the same are hereby, overruled, and the said master's report is hereby confirmed, and the said coupons are declared subject to the distribution ordered by the decree of Justice J. P. Bradley of May 18, 1875, unless other exceptions may have been filed to any of such coupons which have
661 not yet been considered by the court, provided such exceptions have been under the previous orders of the court herein.

It is further ordered, adjudged, and decreed that the receiver, A. Doggett, esq., after payment of the allowance this day made to Francis Vose, the complainant, for costs and expenditures, do make distribution of the balance which may remain in his hands in accordance with the provisions of the former order of Justice Bradley, already referred to, withholding payment from the holders of coupons against which any such exceptions have been filed which have not yet been considered and acted upon as aforesaid.

Done, ordered, and adjudged in open court this 15th day of February, A. D. 1878.

THOMAS SETTLE, *Judge*.

662 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

On motion of complainant's solicitors, ordered that all exceptions to answers of coupon-holders to interrogatories now on file be referred to the master, A. Doggett, esq., to take testimony and report upon the same under the order and rules of this court.

THOMAS SETTLE, *Judge*.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPOVEMENT Fund of the State of Florida et al.

This motion came on to be heard and was argued by counsel, and the court having considered the papers and argument of counsel, and being satisfied from the showing made that the conduct of the present board of trustees has been characterized by an industry, energy,
663 and efficiency which should be commended, and wishing that the court should not be understood as in any manner criticising the action of the present board, or as interfering with their powers and duties as to making sales and titles to lands of said fund, but believing that it may be an advantage to the board and fund that an agent, as contemplated by the decrees of December, 1873, and May, 1875, should be appointed to supply the vacancy occasioned by the resignation of Messrs. Swann, Corley, and Williams with the powers indicated by such decrees—

It is ordered that Sherman Conant, the marshal of the northern district of Florida, be and is appointed agent, with the powers aforesaid, to make sale of the lands of the Internal-Improvement Fund (in the place of Messrs. Williams, Swann, and Corley) under the decree of December 4th, 1873, as modified by the decree of May 18, 1875.

Done, ordered, and decreed in open court this sixteenth day of February, A. D. 1878.

THOMAS SETTLE, *Judge*.

664 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

In the matter of the exceptions of the complainant, Vose, to the payment of the coupons of the Pensacola and Georgia and Tallahassee Railroad Companies out of the fund in the hands of Receiver Doggett.

To the honorable Thomas Settle, judge of the United States circuit court:

Your petitioner, Francis Vose, respectfully prays that he may be allowed to appeal from the judgment herein rendered, on the 15th day of February, A. D. 1878, in this court, to the Supreme Court of the United States, and that the bond required by law may be fixed by your honor.

Respectfully submitted.

F. VOSE, *Petitioner.*

The appeal in this petition is allowed, and the bond is fixed at one thousand dollars.

In open court.

THOMAS SETTLE, *Judge.*

Dated FEBRUARY 23, 1878.

665 F. VOSE
vs.
TRUSTEES OF INTERNAL-IMPROVEMENT FUND et al. } In equity.

In the matter of the petition of the defendants for rehearing of order of Judge Locke, of Dec. 29, 1876, in the matter of the petition of complainant for certain costs, expenses, etc., and the order of Judge Settle made at this term allowing certain expenses.

On motion of Messrs. Jackson and Drew, solicitors of complainant, it is ordered that the petition for rehearing be dismissed, but without prejudice to said petitioners, to bring up the matter of said petition hereafter at such time, and in such form as they may be advised to adopt, subject to all legal and legitimate exceptions.

Done and ordered this May 25, 1878, in open court.

THOMAS SETTLE, *Judge.*

666 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida. } December term.

It is ordered that the decrees heretofore made herein be so far modified as to permit and authorize the said defendants to receive in payment for lands belonging to the Internal-Improvement Fund, which they may hereafter sell, one-half of the coupons of the bonds issued, under the provisions of the internal-improvement act, now held by any one of the parties plaintiff to the said cause, or their assignees, which have been adjudged to be a good and valid lien upon the lands of said fund,

the amount so to be received in each case to be evidenced by the separate certificate of A. Doggett, esq., master in chancery, showing that such coupons have become part of the decree in the said cause, as well as the entire amount held by such party.

It is further ordered that the said master shall keep a record copy of all certificates which he may so issue in a book to be provided for that purpose.

667 The question as to whether the coupons of the Pensacola and Georgia Railroad Company are payable from the Internal-Improvement Fund, pending on motion for rehearing in this court, it is ordered that the holders of any such coupons shall be authorized to designate such lands belonging to said fund as they may desire to take in payment of one-half of their coupons, verified under order of this court. And the trustees of the I. I. Fund shall reserve from sale for the benefit of such parties, the lands so designated until the question of the liability of the fund for said coupons shall be finally adjudicated, or the lands so designated may be sold by said trustees, upon the written order or consent of such coupon-holders, and the money received therefor shall be paid by the trustees to the receiver of this court, to be held as a special fund to be paid over to such coupon-holders, if their claims shall be decided to be payable from the fund; otherwise to be placed in the general fund for distribution as other monies received from sales of lands.

THOMAS SETTLE, *Judge.*

668 F. VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND et al.

Exceptions to report of A. R. Meek, esq., special master upon the fees of Jno. D. Pope as att'y, filed Dec. 4, 1877.

Upon argument of counsel being heard in above-entitled cause, iist ordered that the exceptions filed by John D. Pope, esq, to report of A. R. Meek, special master, in regard to the fee of said Pope, be overruled, and that the report of said master be confirmed.

May 24, 1878.

In open court.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INT. IMP. FUND ET AL. } In equity.

Ordered that the master in said cause, Aristides Doggett, do procure a seal with such device as he may adopt, and that certificates issued by said master under the order passed May 29th, 1878, in said cause, be under his hand and said seal.

May 29th, 1878.

THOMAS SETTLE, *Judge.*

669 F. VOSE *vs.* THE TRUSTEES OF THE INT. IMPROVEMENT Fund et al. } Motion of Jno. D. Pope for the payment of attorney's fees. Filed Dec. 4, 1877.

Upon hearing argument of solicitors in above-stated cause, and upon due consideration thereof, it is ordered that said motion be overruled.

In open court, May 24, 1878.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE *vs.* TRUSTEES INT. IMP. FUND ET AL. } December term, 1878.

In the matter of the exception to the payment of the coupons of the Pensacola and Georgia and Tallahassee railroads companies.

On motion of H. R. Jackson and J. B. C. Drew, esq's, solicitors for complainant:

Ordered that the petition for rehearing herein filed, be continued until the December term, 1878.

It is further ordered that the same operate as a supersedeas, until the said petition be heard.

THOMAS SETTLE, *Judge.*

670 FRANCIS VOSE *vs.* THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida et al.

This day this cause came on to be heard upon motion of S. Pasco, solicitor and of counsel for S. J. Turnbull, *trustees*, W. J. Hines, trustees, and A. F. Finlayson, coupon-holder, whose coupons have been filed with the master in this cause, due notice of said motion having been given to complainant's counsel.

And it appearing that the coupons filed by the said Turnbull to the amount of one hundred and nine-nine dollars and fifty cents, and those filed by the said Hines, to the amount of eight hundred and thirty-four dollars, and those filed by the said Finlayson to the amount of six hundred and thirty dollars, were found to be due and unpaid by the decree *and decreed* made herein by the honorable W. B. Woods, on the 18th day of December, A. D. 1872, and by the said decree the said coupons were found to be upon the same footing as those of the original complainant mentioned therein. and it appearing further that

671 the master in this cause has *has* hitherto failed to admit the said coupon-holders to the dividend paid upon the coupons as directed in said decree—

It is ordered that A. Doggett, esq., the master in this cause be, and is hereby, authorized and directed to pay to the said coupon-holders, or to their counsel, the amounts of principal and interest due up to the present date upon said coupons, so mentioned and recognized in the said decree of December 18, 1872, and that the said coupons be, and they are hereby, admitted and recognized as entitled to all the privileges since extended to the complainant's coupons, the same as if they were particularly mentioned in the subsequent orders and decrees herein.

May 31, 1878.

THOMAS SETTLE, *Judge.*

672 F. VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Fla.

On motion of John A. Henderson, solicitor for Benjamin C. Lewis, the counsel for the complainant being present and not objecting, it is ordered and decreed that the said Benjamin C. Lewis be, and he is hereby, allowed to file with Aristides Doggett, the master in this cause, coupons of certain bonds of the Florida Railroad Company now held by him; which coupons, when so filed and verified by the said master, shall stand on equal footing with the coupons of said road heretofore filed in said cause.

Done and ordered in open court this 12th day of June, A. D. 1878.

THOMAS SETTLE, *Judge.*

673 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund.

David L. Yulee having filed his petition praying leave to file certain coupons therein described as owned by him with A. Doggett, master, under the provision of the decrees made in said cause, it is ordered that the prayer in said petition be granted, and that petitioner have leave to file said coupons with said master to be verified, and report to court in the manner and form required in such cases.

June 14, 1878.

THOMAS SETTLE, *Judge.*

674 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

It appearing to the court that considerable expense can be saved this fund by having the depository located in the city of Jacksonville instead of in the city of Savannah: Now, therefore, on motion of the complainant's solicitor, the defendants' solicitors not opposing, it is ordered that the First National Bank of Florida be, and is hereby, designated as the depository for all funds and monies now on hand in this case, as well as monies that may be hereafter received by the receiver herein, A. Doggett, esq. The said monies to be received and kept by the said First National Bank of Florida as a special deposit, separate and distinct from the general funds, and not to be used for discounts or loans, except upon bonds of the United States.

In open court, at Jacksonville, June 18, A. D. 1878.

THOMAS SETTLE, *Judge.*

675 F. VOSE
vs.
TRUSTEES INTERNAL-IMP. FUND ET AL.

On motion of L. W. Spratt, esq., sol. for the National Bank of Columbia, ordered that the said National Bank of Columbia have leave to file an answer to the interrogatories provided for in the order of his

honor Judge Locke, within 60 days from the date hereof, with liberty also for exceptions to be filed to said answer within 30 days after the said answer is filed.

June 20, 1878.

THOMAS SETTLE, *Judge.*

676 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

The bill this day presented by A. Doggett, receiver in said cause, having been examined, and no one in interest objecting thereto, it is ordered that the same be paid out of the funds in the hands of said receiver, realized from the sales of lands not directed by the orders of this court to be otherwise applied, or which may hereafter come into the hands of said receiver from the same source.

In open court this 20th of June, A. D. 1878.

THOMAS SETTLE, *Judge.*

677 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida. } December term, 1878.

On motion of The Trustees of the Internal-Improvement Fund of Florida, defendants in this cause, it is ordered that the order or decree heretofore made *in* herein May, A. D. 1878, authorizing the said trustees to receive in payment for land belonging to said fund, one-half of the coupons issued under the provisions of the internal-improvement act held by any of the parties plaintiff or their assigns, which have been adjudged a good and valid lien upon the lands of said fund, be, and is hereby, modified so as to allow and authorize the said Trustees of the Internal-Improvement Fund to require at their discretion the payment of not more than twenty per cent. of the price of any sale they may make hereafter, to be made in lawful currency of the United States.

Done and ordered in open court, this fifth day of December, A. D. 1878.

THOMAS SETTLE, *Judge.*

678 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida.

On motion of the Trustees of the Internal-Improvement Fund of Florida, defendants in this cause, it is ordered that the order or decree heretofore made herein in May, A D. 1878, authorizing the said trustees to receive in payment for land belonging to said fund one-half of the coupons issued under the provisions of the internal-improvement act held by any of the parties plaintiffs or their assigns, which have been adjudged a good and valid lien upon the lands of said fund be, and is hereby, modified so as to allow and authorize the said Trustees of the Internal-Improvement Fund to require at their discretion the payment of not more than twenty per cent. of the price of any sale they may make hereafter, to be made in lawful currency of the United States.

Done and ordered in open court this fifth day of December, A. D. 1878.

THOMAS SETTLE, *Judge.*

679 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

This cause having come, upon the petition for rehearing filed by The Trustees of the Internal-Improvement Fund, after argument by the solicitors of Francis Vose and of the said trustees, it is ordered, adjudged, and decreed, that the decree rendered on the 15th of February, 1878, be so extended as to embrace the following words:

It is further ordered, adjudged, and decreed, that the question as to whether the amounts of money allowed to be paid by this decree shall be charged against the plaintiff and quasi plaintiffs coupon holders proportionately, or against the Internal-Improvement Fund, be received until the final determination of the litigation by the receipt of a sufficient amount from the defendant to pay the entire indebtedness, and the costs usually taxable between party and party.

Dec. 5th, 1878.

THOMAS SETTLE, *Judge.*

680 F. VOSE ET AL.
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund. } In chancery.

Upon reading the petition of B. C. Lewis, asking that he be allowed to file certain coupons endorsed by the defendants' trustees in the above cause, with A. Doggett, master, this day filed, and upon motion of John A. Henderson, solicitor for said B. C. Lewis, it is ordered that B. C. Lewis be allowed to file eleven hundred and fifty dollars of said coupons which he now holds with A. Doggett, subject to the usual investigations, and if the same be found correct that they do participate in the results of said suit.

Done and ordered this 17th day of Dec., A. D. 1878.

THOMAS SETTLE, *Judge.*

681 FRANCIS VOSE
vs.
THE TRUSTEES OF THE I. I. FUND ET AL.

Upon filing the petition of S. N. Upchurch praying leave to file certain coupons of the Florida, Atlantic and Gulf Central Railroad Company with A. Doggett, master in said cause, for purpose of verifying the same, it is ordered that the prayer of said petitioner be granted, and that the coupons therein described be filed with said master for purpose of verification as prayed.

Dec. 16, 1878.

THOMAS SETTLE, *Judge.*

682 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INT. IMP. FUND.

Upon filing the petition of the Savings Bank and Real Estate Ex-

change, asking for an order directing Hon. A. Doggett, receiver, to receive and file coupons therein specified, it is ordered that said petition be granted; that said A. Doggett do receive and file said coupons for verification.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE
vs.
THE TRUSTEES OF THE I. I. FUND ET AL.

Upon hearing the petition of C. B. McClenny in the above-stated case, praying an order to file certain coupons therein mentioned and described with A. Doggett, esq., master in said cause, for verification, it is ordered that the prayer of the petitioner be granted, and the coupons therein mentioned be referred to said master for verification, under the decrees rendered in said cause.

THOMAS SETTLE, *Judge.*

683 FRANCIS VOSE
vs.
THE TRUSTEES OF THE I. I. COMPANY ET AL.

Upon reading and filing the petition of Samuel A. Swann in the above-stated case, praying the reference of the coupons of guaranteed bonds therein described to A. Doggett, esq., special master in said cause, for examination and verification, it is ordered that the prayer of the petitioner be granted, and that said coupons be, and are hereby, referred to A. Doggett, master, &c., for verification and registration, under the decrees of court made in said cause.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE ET AL.
vs.
THE TRUSTEES OF THE I. I. FUND ET AL. } In equity.

In the matter of the petition of the complainants for a rule upon the defendants to show cause, etc., etc.

On reading and filing the said petition, ordered that the said defendants do appear before me in open court, either in person or by attorney, on the 19th day of May, 1879, and show cause why the restraining order prayed for in said petition shall not be granted.

THOMAS SETTLE, *Judge.*

684 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND OF FLORIDA ET AL. } May 24, 1879.

On reading and considering the petition of the Trustees of The Internal-Improvement Fund, it is ordered that the complainant show cause in open court on Wednesday morning, in motion hour, why the order and decrees in this cause should not be so modified as to permit them to sell the lands which James G. Speer and James O. De Vall, for and on behalf of the board of commissioners of the St. John's and Indian River Canal reconveyed to the trustees aforesaid, and to receive in pay-

ment of said lands either cash or the bonds of the late William P. Rembert, and the coupons thereto attached, or any claims which said trustees may find to be outstanding against said commissioners, and with the cash proceeds of such lands pay said bonds and coupons and lawful claims, as provided in an act of the legislature of the State of Florida, entitled "An act to *decree* The Trustees of the Internal-Improvement Fund of the State of Florida to sell the lands reconveyed to
685 them by the commissioners of the St. John's and Indian River Canal, and with the proceeds thereof to pay certain bonds and all other lawful demands and claims existing and outstanding against said commissioners," approved March 11th, 1879.

JOHN P. BRADLEY,
Circuit Justice.

FRANCIS VOSE
vs.
TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al. } In equity.

This cause coming on to be heard on petition of The Trustees of the Internal-Improvement Fund, defendants above named, for an order modifying the orders and decrees hereinbefore made in this cause, so as to permit the said trustees to sell the lands conveyed by them to the board of commissioners of the St. John's and Indian River Canal, and reconveyed by James G. Speer and James O. De Vall, for and on behalf of said commissioners, to said trustees, by deed dated March 25th, 1863, and to sell said lands and apply the proceeds, as provided by an act entitled "An act to direct The Trustees of the Internal-Improvement Fund of the State of Florida to sell the lands reconveyed to them by
686 the commissioners of the St. John's and Indian River Canal, and with the proceeds thereof to pay certain bonds and all other lawful demands and claims existing and outstanding against said commissioners," approved March 11th, 1879, and no objection being made thereto:

Now, therefore, it is ordered and adjudged, that all orders and decrees and injunctions heretofore made or issued in this cause, be, and the same are hereby, modified and vacated, in so far as they interfere with or prevent the trustees aforesaid or their successors from selling said lands, and out of the proceeds thereof paying and settling all lawful claims and demands existing and outstanding against the board of commissioners aforesaid, and especially the bonds issued by the said commissioners and interest thereon, belonging to the estate of the late William P. Rembert, and in so far as the said orders and decrees or injunctions prohibit the said Trustees of the Internal-Improvement Fund from receiving in payment for said lands, said bonds, and coupons, or any claims which they, The Trustees of Internal-Improvement Fund, may deem proper to be paid under the said act.

687 Done, ordered, and adjudged in open court of Jacksonville, in said district, on the 28th day of May, A. D. 1879.

JOSEPH P. BRADLEY,
Circuit Justice.

F. VOSE
vs.
TRUSTEES OF THE I. I. FUND ET AL.

On reading the motion for re-referring the exceptions to answers to

interrogatories of coupon holders, ordered, that the said exceptions be again referred to A. Doggett, esq., for further proofs and argument, and report upon the same under the equity rules of this court.

THOMAS SETTLE, *Judge.*

688 FRANCIS VOSE ET AL.
vs.
THE TRUSTEES OF THE INT. IMP. FUND OF Florida.

Comes now and presents his petition, Edward M. Cheney, trustee, and asks the leave of the court to file thirty past-due coupons of bonds of the Florida, Atlantic and Gulf Central Railroad Company, which he exhibits to this court; the counsel of the complainants being present and not objecting, it is, on motion of said Cheney:

Ordered, that the said coupons be received and filed by A. Doggett, master in this cause, and when so filed, the said coupons and the owner thereof be entitled to share in all the orders and distributions made with reference to past-due coupons filed with said master, and subject to the previous orders of the court.

Done and ordered in open court, June 9, A. D. 1879.

THOMAS SETTLE, *Judge.*

689 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INT. IMP. FUND OF Florida.

Comes now John A. Henderson, and presents his petition, and asks the leave of the court to file the past-due coupons of bonds Nos. 326 and 327, which bonds, with the coupons attached, he exhibits to the court. The counsel of the complainant being present and not objecting, it is, on motion of said Henderson:

Ordered, that the past-due coupons of the two bonds, Nos. 326 and 327, Florida Central Railroad Company, be received and filed by A. Doggett, master in this cause, and when so filed, that the said coupons and the owner thereof be entitled to share in the orders and distributions made with reference to past due coupons filed with said master, and subject to the previous orders of the court.

Done and ordered in open court, June 9, A. D. 1879.

THOMAS SETTLE, *Judge.*

690 FRANCIS VOSE ET AL.
vs.
THE TRUSTEES OF THE INT. IMP. FUND OF Florida.

It is hereby ordered and decreed in this cause that The Trustees of the Internal-Improvement Fund, do invest the five thousand dollars collected by them of the executors of the last will and testament of Edward Houstoun, being a part of the proceeds of the sale of the Florida, Atlantic and Gulf Central Railroad, according to and as provided in the internal-improvement act of said State, and as to them may seem best, and that they report the same to this court.

Done and ordered in open court this June 28th, A. D. 1879.

THOMAS SETTLE, *Judge.*

691 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INT. IMP. FUND.

In matter of verification of coupons, filed by C. B. McClenny, it appearing to the court that said coupons have been filed by A. Dogget, esq., master, &c., pursuant to an order of this court; it further appearing that the usual interrogatories have been propounded to said C. B. McClenny, touching the ownership genuineness of said coupons so filed by him, and the said C. B. McClenny having answered the same under oath, and states that he is the bona fide holder of the said coupons, and that he purchased the same for a good and valuable consideration, and that they have never been paid;

And it appearing further that said proofs have been duly filed, and that no exceptions to the same having been filed:

It is, therefore, ordered that the said coupons so filed by the said C. B. McClenny as registered by A. Doggett, esq., master, be held and
692 considered as duly verified under the orders of court as made in this cause and constitutes a lien upon the Internal-Improvement Fund.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INT. IMP. FUND.

In the matter of the verification of certain coupons filed by S. N. Upchurch.

It appearing to the court that said coupons have been filed A. Doggett, master, pursuant to an order of this court.

It further appearing that the usual interrogatories have been propounded to the said S. N. Upchurch as to ownership and genuineness of the said coupons so filed by him, and the said Upchurch sent interrogatories under oath, and says that he is the bona fide owner and holder of the said coupons, and that he believes the same have not been paid.

And it further appearing that said proofs have been duly filed, and that no exceptions have been taken to the same.

It is, therefore, ordered that the said coupons so filed, by the
693 said S. N. Upchurch and registered by A. Doggett, as aforesaid, be held and considered as duly verified under order of court made in this cause applicable thereto.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INT. IMP. FUND.

In matter of verification of coupons filed by Sam'l A. Swann.

It appearing that said coupons have been filed with A. Doggett, master, pursuant to an order of this court.

It further appearing that the usual interrogatories have been propounded to said Samuel A. Swann touching the ownership and genuineness of said coupons so filed by him, and the said S. A. Swann having answered the interrogatories propounded to him, and having shown by

his own testimony, and the testimony of others, that he is the bona fide owner of said coupons, and it appearing that said proofs have been duly filed, and that no exceptions have been taken to the same;

694 It is therefore ordered that the said coupons so filed by S. A. Swann, as registered by the said master, be held and considered as duly verified under the orders of court made in this cause.

THOMAS SETTLE, *Judge*.

FRANCIS VOSE
vs.
THE INT. IMP. FUND.

In the matter of verification of coupons filed by David L. Yulee.

It appearing to the court that said coupons have been filed by A. Doggett, master, &c., pursuant to an order of this court,

It further appearing that the usual interrogatories have been propounded to the said C. B. McClenny, touching the ownership and genuineness of the said coupons so filed by him, and the said David L. Yulee having answered the said interrogatories under oath, and says that he is the bona fide owner and holder of the said coupons, and that they have not been paid by the company or the trustees,

And it further appearing that said proofs have been duly filed,

695 and that no exceptions to the same have been taken,

It is therefore ordered that the said coupons so filed by the said D. L. Yulee, and registered by A. Doggett, master, &c., be held and considered as duly verified under the orders of court made in this cause.

THOMAS SETTLE, *Judge*.

FRANCIS VOSE ET AL.
vs.
TRUSTEES OF THE INT. IMP. FUND OF FLORIDA.

On motion of John A. Henderson, solicitor for Edward Lewis, and upon consideration of the petition of the said Lewis herein filed, it is ordered that the said Edward Lewis be allowed to file with A. Doggett, master in this cause, the past-due coupons of the said Lewis now here presented to the court, and consisting of Tallahassee R. R. coupons to 24.50; Pensacola and Georgia R. R. coupons to 64.75, subject to the usual exceptions and investigations, and if found to be proper indebtedness, that they be allowed to participate in the benefits of this suit.

Done and ordered in open court this Dec. 22d, 1879.

THOMAS SETTLE, *Judge*.

696 FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND OF FLORIDA et al.

Upon petition of The Trustees of the Internal-Improvement Fund, it is ordered that the trustees are authorized to pay the expenses of the investigations now being made under the provisions of an act of Congress approved March 2d, 1855, entitled "An act for the relief of purchasers and locators of swamps and overflowed lands," and an act entitled

"An act to confirm to the several States the swamp and overflowed lands, selected under the act of September 28, 1850, and the act of the same of March, 1849, as prayed for in their decree, the whole amount not to exceed thirty-six hundred dollars, and the same to be paid out of moneys now in their hands belonging to the Internal-Improve-
697 ment Fund," or that may come into their hands from the sale of lands, and the amounts made and property purchased are upon the payments to the petitioners of the moneys advanced by them individually to become the property of such fund and shall be sold as soon as the investigations shall be completed.

Done in open court Dec. 23d, 1879.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE ET AL.
vs.
THE TRUSTEES OF INT. IMP. FUND OF FLORIDA. } In equity.

In the matter of objections filed in this cause by Francis Vose to certain coupons filed with the master in this cause, among others certain ones filed by B. Cheion and Edward Lewis and John A. Henderson as to their validity, &c.

Now, on motion of John A. Henderson solicitor for said coupon holders, the counsel for said Vose assenting thereto, it is ordered that the coupons filed in this cause by the said Benj. C. Lewis, Edward Lewis, estate of Francis H. Flagg, and John A. Henderson,
698 by, and the same *and* hereby, passed and confirmed and declared and hereby decreed to be entitled to all benefits of payment *suppassed* by and similar coupons which have been approved.

Done and ordered in open court this the 20th day of January, A. D. 1880.

THOMAS SETTLE,
Judge.

FRANCIS VOSE ET AL.
vs.
TRUSTEES OF THE INT. IMP. FUND OF FLORIDA.

It is ordered that The Trustees of the Internal-Improvement Fund of Florida do withdraw from sale until the further order of this court, the alternate sections of swamp & overflowed lands lying on each side of and within six miles of the route of the road of the Gainesville, Ocala and Charlotte Harbor Railroad Company, according to the survey of said route filed with the said trustees March 4, A. D. 1880, under the provisions of the act of the legislatures of Florida, approved March 4th, 1879, entitled "An act to grant certain lands to the Gainesville, Ocala and Charlotte Harbor Railroad Company.
699 Done and ordered in open court this May 4, A. D. 1880.
May 4, 1880.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND OF FLORIDA et al.

Upon the motion of John A. Henderson, it is ordered that Aristides Doggett, master in said cause, be, and he is hereby, directed to issue land certificates, in the amount and in the manner as provided by the orders heretofore made in said cause, to John A. Henderson upon the coupons of the Florida, Atlantic and Gulf Central Railroad heretofore filed with said master by Ketchum & Hartridge, and which said coupons are for interest on the bonds of the said railroad accruing prior to the sale of said road, upon the exhibit of the proper receipt therefor.

Done and ordered in open court this 21st day of April, A. D. 1880.

THOMAS SETTLE, *Judge.*

700 FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND OF FLORIDA.

In the matter of the petition of Zi Butt.

It is considered, ordered, adjudged, and decreed that said petitioner have leave to file and register with Aristides Doggett, esq., master and receiver of the court in said cause, any railroad coupons owned by him contemplated in the orders and decrees of the court hitherto made in the premises, said coupons to be subject to the order and decree of the court in said matter hitherto made.

Jacksonville, April 27, 1880.

THOMAS SETTLE, *Judge.*

701 FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND OF FLORIDA.

On reading and considering the petition of Cochran & Co., it is ordered that the master in this cause, Aristides Doggett, do take from the bonds of the petitioners on file with him as master in the case of E. C. Anderson, sr., et al. vs. The Trustees I. I. Fund of Florida, to wit, bonds Nos. 200, 201, 202, 203, 204, 244, 245, of the denomination of one thousand dollars each, of the Pensacola & Georgia R. R. Company, the coupons attached thereto and file and register the same in this cause as an indebtedness against the Internal-Improvement Fund, and entitled to the benefit of the orders in said cause.

Done and ordered in open court this April 21st, 1880.

THOMAS SETTLE, *Judge.*

702 FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND.

Petition of R. J. McDowell, for verification of coupons.

Upon filing of the petition in the above-stated case by Robert J. McDowell for allowance and verification of certain coupons therein speci-

fied, and it appearing to the court by the affidavit of the petitioner, and by the certificate of R. P. Waring, United States commissioner, therewith filed, that the coupons described in the said petition were clipped from the bonds guaranteed under the int. improvement act, issued by the Florida, Atlantic and Gulf Central Railroad Company, numbered 433, 139, 140, 141, 142, 143, 144, 145, 146, and 147, in the possession and control of said petitioner, on the 24th day of April, 1880, and that said coupons were cut from said bonds by the petitioner in the presence of the said commissioner, which said coupons, being presented in sheets or strips, ten in number, containing twelve coupons each, amounting to the sum of four thousand two hundred dollars ($4,200.00),

703 and the court being satisfied that said coupons are genuine and sufficiently verified, and no objections being made, it is therefore ordered that the said petition be granted; that the said described coupons be filed and registered with A. Doggett, master, and considered and held to be duly verified, and adjudged to be a valid lien against The Internal-Improvement Fund, to be paid under the provisions of the previous orders and decrees made in this cause, including the order allowing the issue of land certificates in certain cases upon coupons duly verified.

May 6th, 1880.

THOMAS SETTLE, *Judge.*

704 FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND.

In the matter of the application of H. R. Jackson and C. R. Cooper, solicitors for certain coupon holders, for an order that Aristides Doggett, master in this cause, issue land certificates on coupons filed with said master in the name of the estate of Edward Houstoun, dec'd. F. Vose, by his solicitor, Jno. T. Walker, opposing said motion, it is ordered that the further hearing of said application be continued till the first Monday in June, and, that in the mean time the usual interrogatories be sent to the holders and owners of said coupons, by Aristides Doggett, master, in aforesaid, when he shall be thereunto requested by said Vose or his solicitor; and that the said Vose have leave to add to the said usual interrogatories any others that he may deem fit, subject to all legal exceptions.

May 6th, 1880.

THOMAS SETTLE, *Judge.*

705 FRANCIS VOSE
vs.
TRUSTEES OF INT. IMP. FUND.

Upon consideration of the petition of George W. Anderson herein filed, it is ordered that the master in chancery in this case *as over* issue land certificates to him or upon his *own* for those coupons maturing prior to the sale of the Pensacola & Georgia Railroad.

May 6th, 1880.

THOMAS SETTLE, *Judge.*

FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND, ETC.

In the matter of the application of Spratt & Cockrell, solicitors, for

an order that Aristides Doggett, master in this cause, issue land certificates on coupons filed with said master by the National Bank of Columbia, S. C. Jacob Burkheim and E. L. Trenhaliem, F. Vose, by his solicitor, Jno. T. Walker, opposing said motion, it is ordered that the further hearing of said application be continued till the first Monday in June, and that in the mean time the usual interrogatories
706 be sent to the holders and owners of said coupons by Aristides Doggett, master, as aforesaid, when he shall be thereunto requested by said Vose or his solicitor; and that the said Vose have leave to add to the said usual interrogatories any others that he may deem fit, subject to all legal exceptions.

May 6th, 1880.

THOMAS SETTLE, *Judge.*

707 FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND. } In chancery.

On motion of H. R. Jackson and C. P. Cooper, esqrs., solicitors, representing certain coupon holders whose coupons have been filed and registered with Aristides Doggett, esq., master and receiver of said court, and which have been properly verified under the orders and decrees of said court made in said cause, in the premises, it is ordered, adjudged, and decreed that the coupons of railroad bonds represented as aforesaid, filed, registered, and verified as aforesaid, belonging to the parties complainants to said cause, whose names are hereinafter included in a list hereto attached and made a part of this order and decree, be, and they are hereby, authorized and permitted to convert one-half of their coupons filed with said master and receiver and verified as aforesaid, into land certificates in the manner provided in and by the decree of this court in the premises, made during the De-
708 cember term, 1878, permitting coupon holders of the Florida R. R. and the Florida Central Railroad to convert one-half of their coupons filed and registered as aforesaid with said master and receiver into land certificates, whether said coupons be coupons of the Pensacola & Georgia R. Road, The Tallahassee Railroad, The Florida Railroad, or the Tallahassee Central Railroad, the same having been properly filed, registered, and verified as aforesaid, and matured in the case of P. & G. & Tallahassee railroads prior to the sale of said P. & G. & Tallahassee railroads on the 20th of March, 1869. It is further ordered, adjudged, and decreed that said Aristides Doggett, master & receiver as aforesaid, do issue land certificates as aforesaid, to said coupon holders through their solicitors, to be made out to said coupon holders or their solicitors, or in part to said coupon holders and in part to their solicitors, at the instance and on the application of the solicitors of said coupon holders, respectively; the list of said coupon holders to be embraced in & by said order and decree being as follows, to wit:

709 The following coupons represented by H. R. Jackson & C. P. Cooper: Holders, A. S. Johnston, James H. Johnston, M. A. Cohen, R. M. Demere, E. A. Lorton, James S. Bayward, L. F. Nicoll, Wallace Cumming, T. I. McNish, William Duncan, Hopkins, Dwight & Co., Seaton Grantland. Coupons represented by C. P. Cooper: Holders, Bradley Martin, est. Charles Dubignon.

Done in open court this 6th day of May, A. D. 1880.

THOMAS SETTLE, *Judge.*

ATTORNEYS' FEES FOR TAKING TESTIMONY.

To T. W. Brevard	690 00
" D. S. Walker	1,120 00
" R. B. Hilton	705 00

FEES OF ADVISING COUNSEL.

To J. P. Sanderson	286 00
" J. H. Whiting	350 00
" E. M. Randall	1,000 00
" W. G. M. Davis	2,016 50
" J. D. Pope	350 00

COSTS OF COURT.

To Sherman Conant, U. S. marshall	327 96
" Magruder, " " "	91 00
" J. E. Townsend, U. S. clerk	305 85
" Philip Walter, " " "	137 60
" A. Doggett, master	485 46
Carried forward	$32,265 30

718

Brought forward	$32,265 30
Sundries as itemized in 40th division of Exhibit B.	1,927 32
	$34,192 62

719 Second. I further find and report that in advance of, and in addition to the action instituted in this court against The Trustees of the Internal-Improvement Fund, the petitioner, Francis Vose, by other suits and other means and agencies used in protecting the landed and the sinking fund, incurred and paid other expenditures of money, that is to say:

a. A suit in the supreme court of the State of New York against The Trustees of the Internal-Improvement Fund and Moses Taylor, which resulted in securing and transferring to A. Doggett, esq., receiver, a sum of upwards of $25,000, being part and parcel of the sinking fund.

SOLICITORS.

To Evarts, Southmayde & Choate	$875 00
To Strong & Sheppard	3,150 00

b. In protecting the fund from waste and depredation by procuring testimony to set aside illegal conveyances and to expose frauds in the management of the lands, in resisting the allowance of coupons illegally issued or fraudulently circulated, etc., etc.; and in the maintainence of a suit instituted by A. Doggett, receiver, against the Florida
720 Railroad Company for a large sum of money claimed to be due to the sinking fund, now pending in the Supreme Court of the United States.

Solicitor's fees.

To E. W. Stoughton	$1,000 00

Counsel fees.

To B. R. Curtis	750 00

RESISTING FRAUDULENT COUPONS.

Attorneys' fees.

To J. J. Finley	554 50
" S. Y. Finley	50 00
" J. B. C. Drew	1,331 50
" W. R. Anno	50 00

INSTITUTING PROCESS TO RESIST TRESPASSES.

To J. P. C. Emmons	300 00

Agents to investigate fraudulent grants and fraudulent coupons, and to procure testimony to set aside and vacate the same, and to promote the sale of lands.

To J. H. Mercer	6,928 16
" H. A. Corley	1,155 67
" Gen. Jos. E. Finnegan	640 00
" T. R. Strong & Strong & Sheppard	2,960 85
	$19,745 68

721 Third. I further find and report that peculiar and great personal services have been rendered by the petitioner, Francis Vose, in the work of protecting the internal-improvement and the sinking funds; those services extending over a period of more than eleven years. By the instrumentality of the suits already mentioned as having been instituted by him, by the agencies he employed and sustained, and by his own vigilance and personal efforts he has saved from spoliation and subjected to the decrees of this court a vast domain of over ten millions of acres of land; and has brought into this court large sums of money, which, from time to time, have been distributed by its orders.

I consider and report that the charge embraced in his itemized account, and numbered forty-two (42) for $25,000 principal, and $9,625 interest, is reasonable and just.

I also find that the charge in his itemized account, numbered forty-one (No. 41) for personal expenditures of $15,003.35, is reasonable and just. Total $40,003.35.

722 Fourth. I find and report that $5,000 of the foregoing expenditures, which ought to have been paid out of the general fund, have been charged to Francis Vose by the receiver in this case.

SUMMARY.

I find and report that the aggregate sum of $93,941.65 principal, and $39,429.46 interest, should be allowed to Francis Vose under his petition.

723 I further find and report that Francis Vose has expended the following sums of money in proceedings instituted by him against the Florida Railroad Company and David L. Yulee, to wit:

SOLICITORS' FEES.

To J. M. Arnoux	$15 00
" Evarts, Southmayde & Choate	1,516 43
" Dewson & Livingston	75 00
" J. E. J. D. Broome	98 00
" E. M. Randall	100 00
" Strong & Sheppard	280 00
" T. C. T. Buckley	350 00
" H. Bisbee, jr	605 55
" Kelly	76 50
" C. P. Cooper	25 00
" Jackson, Lawton & Bassinger	500 00

But it not appearing that either the Internal-Improvement Fund or the sinking fund have been in any way protected or benefitted by these expenditures, I find and report that they should not be allowed to the said Vose under his petition.

All which is respectfully submitted.

A. R. MEEK,
Special Master.

724 MASTER'S FEES.

26 days in taking testimony and hearing arguments, at $3 per day	$78 00
110 folios, at 20c. per folio	22 00
Making report	50 00
	$150 00

725 EXHIBIT C.

In circuit court United States, northern district of Florida.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND OF FLORIDA ET AL.

In the matter of costs and expenses in above-entitled suit, before A. R. Meek, special master.

Under order in above-entitled cause, made and bearing date December 29th, 1876, and signed by his honor J. W. Locke, appointing me special master in chancery, with all the powers of a master in chancery under the rules of said court to take proof touching each item in the several written claims to be presented before me, hear argument, etc., under said order—

Be it remembered that on this 4th day of December, A. D. 1877, came before me Francis Vose, the complainant above named, and his solicitor, J. B. C. Drew, esq.; also came C. P. Cooper, esq., solicitor for Bradley

Martin, Charles DuBingon, et al.; also came James M. Baker, esq., solicitor for the defendant trustees above named. Whereupon
726 the said Francis Vose, the complainant, being duly sworn on oath as witness in own behalf, says that:

Exhibit filed with the said A. R. Meek, special master, under date of August 20th, A. D. 1877, and hereto attached, marked Exhibit B, is the itemized account filed and provable by me under the order of his honor J. W. Locke, in this case, brought by me against the Trustees of the Internal-Improvement Fund of Florida et al.

Now comes the said C. P. Cooper, esq., attorney for Bradley Martin et al., and enters his general exception to the testimony in the following words, filed herewith and marked Exhibit A A:

FIRST EXCEPTION. There has been no notice by said special master on said protestants of the time or place or fact of taking testimony in said matter.

SECOND EXCEPTION. There has been no sufficient or legal notice of intention to take testimony in said matter on said protestants by said Francis Vose or his counsel.

727 THIRD EXCEPTION. The testimony taken was "ex parte," and much of it otherwise illegal and altogether inadmissible, being (as these protestants are informed), F. Vose's own testimony taken before said special master many months since (without any notice whatever to parties in interest) as to his own personal expenses, &c., and supported by a mass of receipts as vouchers, which protestants have had no opportunity of examining, and to the admission of which, protestants would have objected had they been present.

At the same time came J. M. Baker, esq., solicitor for the Trustees of the Internal-Improvement Fund and entered his objections, which are filed herewith marked Exhibit C C.

728 To prove item number 1 in itemized account of Francis Vose, the receipt of M. D. Papy was produced and filed, marked Voucher No. 1.

Item number 2. Complainant produced a receipt of J. H. Arnonx for $15, filed marked Voucher No. 2.

Items number 3. Account of Evarts, Southmayde & Choate, complainant produced receipt of Evarts, Southmayde and Choate for the sum of $2,391.43, filed marked Voucher No. 3.

Item number 4, sum of $75 paid to Dewson & Livingston:

Mr. Vose testified that the voucher was lost or mislaid, but that he paid said sum of money to said parties for taking testimony.

Item number 5, $98 paid to J. E. & J. B. Broome:

Mr. Vose exhibited their receipt, which was filed, marked Voucher No. 5.

Item number 6, E. M. Randall:

Mr. Vose produced two vouchers, one for $1,000, and the
729 other for $100, filed, marked Vouchers 6 and 7.

Item number 7, amount $50, Foster & Thompson:

Mr. Vose exhibited receipt for this amount, filed, marked Voucher No. 8.

Item number 8, N. P. Dockery, clerk of court, amount $75:

Mr. Vose testified that he could not find the receipt, but that he paid said sum of money.

Item nnmber 9, J. S. Adams, amount $100:

Mr. Vose testified that he could not find the receipt therefor, but that he paid said sum of money.

Item number 10, T. R. Strong and Strong & Sheppard, amounting to $:

Mr. Vose testified that the vouchers given by these attorneys was for services in litigations other than these cases, but that the aggregate amount and the items of the same contained in the itemized account were all paid to them for services as attorneys and counsellors in and about this litigation.

Item number 11, T. C. T. Buckley, amount $350:

Mr. Vose offered a check showing the payment to Buckley of $100, filed, marked Voucher No. 9. He also testified that he had paid said Buckley the further sum of $250, but had mislaid the voucher.

730 Item number 12, H. Bisbee, jr.:

Mr. Vose being interrogated in matter of each separate item set forth in his statement as paid to said Bisbee, jr., says that each was actually paid to said Bisbee, jr., at or about the time therein stated for legal services and advice rendered in matter of this cause by the said Bisbee.

Vouchers for portions of the said items are filed, marked Vouchers 10. And the said Vose says that two of the items of payment to said Bisbee were made through A. Doggett, esq., receiver in said cause, and were $500, and $387.99, and made by said Doggett upon the order of said court, and upon that order charged to him, the said Vose, and deducted from his pro rata of the distribution of funds in the cause. The item in the statement of account upon subsequent examination, for the sum of $388, as paid to said Bisbee, by the said receiver, he thinks is an error and should not be charged.

Item number 13, Magruder W. Marshall, amount $91:

Mr. Vose testifies that he paid said sum for fees in this litigation, but has lost or mislaid the voucher therefor.

731 Item number 14, H. J. Kelly, amount $76.50:

Mr. Vose testifies that he paid said sum for taking testimony in this litigation, but that the voucher therefor has been lost or mislaid.

Item number 15, J. N. Whiting, amount $350:

Mr. Vose produced vouchers therefor, marked No. 11.

Item number 16, D. S. Walker, amount $1,120:

Mr. Vose testifies that he paid this sum for legal services rendered in this case, but that he never received any receipt therefor.

Item number 17, Jackson, Lawton & Bassinger, $23,173.58:

Mr. Vose testifies that each item in this statement was paid to Messrs Jackson, Lawton & Bassinger, in this case, as his solicitors. Vouchers for a portion of the same were produced and filed marked.

He also states that the items of $4,500, and $5,436 were paid to said solicitors on the order of the court, by A. Doggett, esq., receiver in this cause, and deducted by the said receiver from his pro rata portion of the funds in said receiver's hands for distribution.

732 Item number 18, T. W. Brevard, amount $600. Vouchers presented and filed, marked No. 12.

Item number 19, J. P. Sanderson, amount $286. Vouchers presented and filed, marked No. 13.

Item number 20, R. B. Hilton, amount $705. Vouchers presented and filed, marked vouchers No's 14 and 30.

Vose testifies that amounts not shown by vouchers were paid to Mr. Hilton for legal services in this case.

Item number 21, J. D. Pope, amount $350. Voucher presented and filed, marked voucher No. 15.

Item number 22, A. Doggett, amount $485.46. Vouchers presented and filed, marked Voucher No. 16; paid for master's fees in this cause, for taking testimony; the amount not covered by vouchers.
Mr. Vose testifies that he paid as charged.

733 Item number 23, S. Conant, U. S. marshall, amount $327.96:
Vouchers presented and filed, marked voucher No. 17.
The amount of $121.92 was paid through my solicitor, General Jackson.

Item number 24, H. A. Corley, amount $1,155.67. Vouchers presented by Mr. Vose for this amount:

Mr. Vose testifies that the small amount not covered by vouchers was paid him.

Item number 25, J. E. Townsend, clerk U. S. court; amount $305.85:

Mr. Vose testifies that the vouchers in this item were lost or mislaid, but the sums were paid as charged by him, except item $96.25 paid through his solicitor, Gen'l Jackson; this was for clerk's fees in this case.

Item number 26, B. R. Curtis, amount $750. Vouchers presented and filed, marked Voucher No. 19.

Item number 27, C. P. Cooper, $25:

Mr. Vose testifies and presents voucher therefor, filed and marked Voucher No. 20.

Item number 28, J. J. Finley, amount $554.50. Vouchers presented, filed, marked Voucher No. 21.

Item number 29, S. Y. Finley, amount $50:

734 Mr. Vose testified that he paid this sum for legal services in this case, but received no voucher.

Item number 30, J. B. C. Drew:

Amount $1,331.50; voucher presented and filed, marked Voucher No. 24.

Item number 31, J. T. Hoague:

Amount $1,250.03; vouchers presented for a portion of the same, filed, marked No. 32; Vose testifies that the sum not covered by vouchers were actually paid as charged for legal services in this case.

Item number 32, W. R. Anno:

$50; voucher presented and filed, marked No. 23.

Item number 33, J. P. C. Emmons:

Amount $300; vouchers presented and filed, marked No. 24.

Item number 34, E. W. Stoughton:

Amount $1,000 counsel fee in this case; voucher presented and filed, marked No. 25.

Item number 35, W. G. M. Davis:

Amount $2,016.50; vouchers presented and filed, marked No. 26.

Item number 36, Joseph Finnegan:

Amount $640; promoting sales of land and stopping trespass on same; vouchers presented covering the amount, filed, marked No. 37.

735 Item number 37, J. C. Marcy:

Amount $525, attorney's fees in this case; Mr. Vose presented vouchers covering this sum, which were filed and marked No. 28.

Item number 38, Philip Walter, clerk:

Amount $155.60 for clerk's fees in this case; vouchers presented covering this sum and filed, marked No. 29.

Item number 39, J. H. Mercer:

Amount $6,928.16, for salary and expenses as agent; Mr. Vose testified that Mr. Mercer was employed by him as an agent in collecting testimony promoting the sale of lands belonging to the fund, and protecting same from trespass, and also in investigating the legitimate character of coupons presented as a claim against this fund; that he actually paid the sums so charged, and that the money was received by said Mercer but that vouchers were either not received, or if received they have been mislaid.

Item number 40, sundry items:

Am't $1,937.32. Mr. Vose testified that these were items incurred and paid by him during the period charged, for expenses in and about this litigation; that the nature of the charges, such as for tele-
736 grams, express charges, etc., etc., it was impossible at all times to obtain receipts, and where receipts were obtained they have been lost or mislaid; but that the sums were charged from memoranda made at the time of each payment.

Item number 4:

F. Vose's expenses, railroad fares, hotel bills, etc., $15,003.35.

(Defendant's solicitor objects to the introduction of any testimony to prove personal services and expenses of Francis Vose, complainant, the

same not being taxable as costs in this case either under the rules of chancery or under the order of court.)

Mr. Vose testifies that these expenses were incurred and paid by him in attending to this litigation in Florida.

Item number 42:

Services between the years 1866 and 1876, say eleven years, at $2,500 per year, with interest on the same, amounting to $37,125.

Mr. Vose testifies that this sum is charged for personal services in attending to this litigation, and that during those years, nearly his entire time was occupied in such service, and that the same was reasonably worth the sum of $2,500 per annum.

737 This ended the direct testimony of the complainant.

738 DECEMBER 15TH, 1877.

And now came J. M. Baker, esq., who cross-examined the witness Francis Vose, who testified as follows (Judge Baker being the solicitor for the defendants):

Item number 1, M. D. Papy:

This payment was made before the commencement of this suit. It was for counsel and advice given me in relation to the proper legal steps to be taken to enforce the payment of coupons involved in this case.

Item No. 2, J. M. Arnoux:

This payment was made for attending the sale of the Florida Railroad and protecting the lien due the Trustees of The Internal-Improvement Fund.

Item number 3, Evarts, Southmade & Choate:

This payment was made for costs and attorneys' fees and counsel fees and legal services rendered in this litigation.

The services prior to 1868 were rendered in a suit for the foreclosure of the internal improvement bonds and coupons in the city of New York.

739 The payments subsequent to that date were made for counsel fees in suits for the collection of coupons upon the bonds of railroads in Florida.

These suits were both in Florida and New York. The payments of $25 on two occasions, as charged in my account, to wit, April 1st, $25, and June 21st, $50, were for services in this suit.

The item of counsel fees, June 12th, Sept. 13th, December 30th, and October 21st, 1875—$250—were for expenses in pursuing the fund and bringing it into the hands of the court, in this case.

That suit was successful, and upwards of $25,000 were recovered and placed in the hands of the receiver in this case.

Item No. 4, Dewson & Livingston:

The payment was not made in this case, but was made in a previous suit, instituted for the purpose of collecting the coupons upon said bonds.

Item No. 5, J. E. & J. B. Broome:

This payment, made in 1867 & 1868, in matter of suits in New York, for collection of coupons upon said bonds.

Item No. 6, E. M. Randall:

These payments, up to 1868, were not made in this suit, but were made in suits which form a part of the litigation carried on in
740 Florida and in New York to secure the payment of these coupons; which litigation ended by securing their payment and bringing the fund into court which is now being distributed.

The payments made from 1874 to 1877, inclusive, were principally for services as counsel in this suit; on reflection, I think a portion of it may have been for previous suits; I cannot say what portion positively, but a very small portion.

Item No. 7, Foster & Thompson:

This payment was made for protesting coupons previous to this suit, but with the view to its commencement; paid in August, 1868.

Item No. 8, W. P. Dockery:

August, 1868; fees as clerk in suit versus Florida Railroad.

Item No. 9, J. S. Adams:

For attorney's fees in revising and collecting and procuring the printing, in pamphlet form, all laws relating to the Internal-Improvement Fund of Florida, which were used for distribution by the trustees, and were indispensible in commencing and conducting this litigation.

741 Item No. 10, T. R. Strong & Strong & Sheppard:

Reside in the city of New York. The amount paid $6,390.85, was paid for services as counsel and attorneys in the suits in New York and Florida, for collections of debts due the trust funds now being distributed in this case. The period of these services was from 1868 to 1876, inclusive. The general nature of their employment was the preparation of papers, the procurement of exemplifications of record, and attending to the general interests and protecting the fund in this suit. They also acted as advisory counsel in this suit, and when in the progress of this case exemplification of records, documents, and papers were required here, I always applied to them for such service. Their services were so intimately connected with this case that I am unable to say how much of the charges apply strictly to this suit alone, and particularly in suit to recover $25,000 from Moses Taylor due this fund.

Item No. 11, T. C. T. Buckley:

Paid as charged in suit against Florida R. R. in New York for
742 the collection of the debt due the fund in this case, which I regard as a part of this litigation.

Item No. 12, H. Bisbee, jr.:

This was for services as the original solicitor in this suit and was principally paid for services in this suit. Yes, a portion was paid in the suit against Yulee. I cannot state the exact amount. I will say, however, three-fourths was paid in this suit; the payment of $387.99, and the payment of $388, charged as paid by order of the court, I am now under the impression was an error of the person who made up the account.

(Mr. Drew, solicitor for Mr. Vose, withdrew the item of $387.99 as error.)

The item of $388 was paid by order of Judge Woods, but I am in-

formed by my counsel was inadvertantly charged to my account by mistake of Judge Frazer; and the sum was taken from my distributive share.

Item No. 13, Magruder, U. S. marshall:

This was for fees in suit against the Florida R. R. Company in this State.

Item No. 14, Kelly:

This was for taking testimony in suit against the Florida Railroad in New York.

743 Item No. 15, J. W. Whiting:

Paid as counsel in this case. He does not reside in Florida, but in New York.

Item number 16, D. S. Walker:

Paid for counsel and attorney's fees in this case; he resides at Tallahassee. His employment was principally in endeavoring to induce the trustees to pay these coupons and in appearing before the trustees and negotiating with them.

Item number 17, Jackson, Lawton & Bassinger:

I employed this firm the latter part of 1870; they have been the solicitors ever since. I gave my obligations to them for $6,500 of said amount charged. I employed them in October or November, 1870. They made an amendment to the original bill in this case and the injunction was granted by Judge Woods and a receiver appointed, and the subsequent decrees had. Their services have extended until the present time. The payment includesservices for the present year 1877. They received my obligations as payment for the sum of $6,500.

744 Item number 18, T. W. Brevard:

This payment was for attorney and counsel fees from 1870 to 1876 inclusive. He was engaged in taking testimony before the master in this case at Tallahassee, obtaining proof, documentary evidence and necessary papers and exhibits in this case.

Item number 19, J. P. Sanderson:

This was for counsel fees in this suit and the suit against the Florida R. R. Co.

I cannot say how much was charged for each exactly; I will say, however, about one-half for each.

His services were advisory in their nature, being regarded as an eminent lawyer and residing in Jacksonville, I frequently advised with him as to the steps to be taken in this suit.

Item No. 20, R. B. Hilton:

This was for taking testimony in this case at Tallahassee principally. He resides at Tallahassee. He also appeared before the trustees for coupon-holders.

Item No. 21, J. D. Pope:

For legal services. Yes; I think he did reside at Savannah, Ga.,

either there or at Atlanta. The payment was for services in
745 this case. He was United States district attorney. He was employed to assist in argument on motion for injunction in this case. It was expected to have been argued at Savannah, Ga., but Judge Bradley adjourned the hearing to Jacksonville. Mr. Pope came here, assisted at the argument. I paid for his services and expenses.

Item No. 22, A. Doggett:

This was for charges and fees, taking testimony and copies of papers in this case. Mr. Doggett is the general master in the cause. All testimony in this case has been taken before him.

Item No. 23, S. Conant, U. S. marshall:

This payment was for regular costs paid to him as U. S. marshall.

Item No. 24, Hugh A. Corley:

The payment made to him was for services and expenses in promoting the sales of the lands and preventing trespassing upon the same. The reason for his employment was his long experience and acquaintance with the lands of the State; his intimate connection
746 with persons who generally purchased lands, and his knowledge of the situation and position of the same, and the necessary steps to protect the same from trespass; the trustees having taken no steps in this direction and I found large tracts of the finest timbered land belonging to the fund, year by year being stripped of the timber by trespassers and persons engaged in obtaining turpentine.

Also, soon after the decree in this case, it became apparent that there was a large amount of coupons in the hands of persons. These coupons, it was quite evident, were fraudulent, and not legitimate claims upon this fund. Coupons that had been irregularly issued by the railroad companies, or had been paid either by the companies or trustees of the fund. Many of these coupons had been presented to the receiver for payment. Mr. Corley was employed to investigate the character of these coupons, and to examine the records at the comptroller's office to ascertain, if possible, the amount actually outstanding legitimately. Mr. Corley having been connected with the administration of this trust fund, either as a trustee or an employee, for many years prior and subsequent to the war, was thought by me, and he so proved to be, the fittest person for the employment referred to.

747 Item No. 25, J. E. Townsend:

This payment was for fees as clerk of the court in this case.

Item No. 26, B. R. Curtis:

Yes, sir; he resided in Boston, and was ex-associate justice of the Supreme Court of the United States.

The payment was for an opinion as to the power of the receiver in this case to collect the one per cent. sinking fund due the fund in this case from the railroad companies. The suit was commenced on his advice by the receiver, A. Doggett, esq., and is now pending in the Supreme Court of the United States. Judge Curtis also rendered services by giving counsel and advice in this case.

Yes, sir; the suit by the receiver is against the Fla. R. R. Co., as according to Judge Curtis's advice. It is a large debtor to this fund.

The further taking of testimony continued until Monday, December 17th, 1877.

DEC. 17, 1877.

Continued until December 18th, 1877.

748 DECEMBER 18TH 1877, and DEC. 19TH, 1877.

Cross-examination of Francis Vose resumed by Judge Baker for defendants; J. B. C. Drew, esq., present for complainent. Mr. Vose testifies in answer to questions by Judge Baker, as follows:

Item No. 27, C. P. Cooper:

This was for services as attorney, but whether in this case or not, on reflection, I think not.

Item No. 28, J. J. Finley:

This payment was for services as attorney principally, before the master in taking testimony in this case.

Item No. 29, S. Y. Finley:

This payment was for attorney's services after the election of his father, J. J. Finley, to Congress, covering a short period of time.

Item No. 30, J. B. C. Drew:

Payment was for services as attorney in this case in taking testimony before the master, and also more particularly in contesting the validity of a large amount of certain coupons presented the estate of Sanderson and Mr. Sammis. This claim upon the fund, amounting to
749 about $50,000, which after testimony taken and arguments had before the matter and the court, were rejected.

Item No. 31, J. T. Hoague:

Was paid as attorney employed in suits in New York City, in recovering a portion of the Internal-Improvement Fund in the hands of Moses Taylor, which was subsequently recovered and paid into the hands of the receiver in this case. It also includes his expenses to Florida and return, and services in this case.

Item No. 32, W. R. Anno:

This was paid for attorney's services in this suit. Mr. Drew being absent in Washington during summer of 1875, it was deemed necessary to have some attorney here to attend to the interests of the suit.

Item No. 33, J. P. C. Emmons:

Was paid for attorney's fees in this case. He was specially employed to inaugurate measures for the protection of the landed fund from trespass.

Item No. 34, E. W. Stoughton:

This was for counsel fees and services at Washington in the case of the receiver against Fla. R. R. Co., for the collection of the sinking
750 fund in this case, and also for services as counsel in this case. Yes, sir; Mr. Stoughton does reside in New York.

Item No. 35, W. G. M. Davis:

This was for services from January, 1875, to May, 1876, as counsel and attorney in this suit; during the time of his engagement, he acted as a solicitor during the absence of Messrs. Jackson, Lawton & Bassinger.

Item No. 36, Joseph Finnegan:

These services were rendered by Gen'l Finnegan in promoting the sales of land and investigating coupons. No, sir; Gen'l Finnegan is not a lawyer. He resides in Florida; he has resided there for many years previous to and subsequent to the war; the reason for his employment was his long familiarity with Florida lands, and his great success in selling large tracts of land.

Item No. 37, Philip Walter:

This payment was for clerk's fees in this case.

Item No. 38, J. C. Marcy:

751 This payment was for attorney's fees in this case; upon reflection, I think a part of this was for services in case of Yulee vs. Vose. I cannot say how much, but will say half.

Item No. 39, J. H. Mercer:

Services from Sept. 16th, 1871, to May, 1873. Mr. Mercer was an agent employed by me in collecting and procuring testimony in this case, in promoting the sales of lands. He was specially engaged, however, in procuring testimony, by which the fraudulent grants, amounting to upwards of two millions acres of land, most choice lands, belonging to the fund were annulled and reconveyed to the fund by the orders and decrees of the court made in this case. He was also engaged in investigating the character of coupons during the period of his service, covered by the itemized account. Mr. Mercer was constantly employed by me in this business, and he had no other employment; the judgment you inquire of was obtained by him against me before a New York court, after proof of his services in this case, and was paid by me as charged; many of the items were paid as his travelling expenses. Mr. Mercer is not an attorney at law, and lives in New York. During his employment he was most of the time in Florida.

752 Item No. 40, sundry items:

These charges were made for moneys expended by me as necessary expenses on this suit. They were made from memoranda made at the times of the disbursements as charged.

The payment for rent as charged was paid to J. C. Greeley, agent, was for an office in this city occupied by Gen'l Finnegan, Messrs. Corley and Williams, agents for the sale of lands belonging to this fund.

Item No. 41, personal expenses:

These charges made for railroad fares, hotel bills from October 25, 1866, to December, 1876, were expenses incurred by me in this litigation, and were charged from memoranda made at the time of the payments, the three items of October 25, 1866, of $400; July 23, 1867, of $654.50; and December 12, 1868, $825, were expended before the commencement of this suit in prosecuting other suits in this litigation and preparatory to filing the bill in this case.

The cross-examination was here ended.

Judge Baker, solicitor for the defendants, trustees, objects to the testimony in support of the charge in Mr. Vose's itemized account for services in and about this litigation between the years 1866
753 and 1876, inclusive, upon the ground that personal services in prosecuting a claim is not taxable as costs in this case against the defendants.

And now came Mr. Vose and was re-examined by Mr. Drew, who testified as follows:

754 Redirect examination of Mr. VOSE:

Question by Mr. DREW. Will you please give a general explanation and statement as near as you can of the nature of your services, your expenses, and the services of your counsel, attorneys, and agents, performed in this litigation in connection with the itemized account you have filed, upon which you have been cross-examined by Judge Baker? Please state also, as far as you are able, the results of this litigation thus inaugurated and carried on here and in New York since the year 1866, up to the present time.

Answer. In answering this question it will be more convenient for me to make a statement in detail as far as I am able at present, of the grounds of my claim upon the fund; this statement must of course be more or less general in its nature, referring to my itemized account now on file.

I will first refer to my expenses in proceeding to Florida from the State of New York, in which State I then resided, for the purpose of consulting with counsel in respect to bringing a suit against defendants to restrain the waste and unlawful disposition of the moneys and lands constituting The Internal-Improvement Fund of the State of Flor-
ida.

755 To time spent in consulting with counsel at Savannah, Georgia, Jacksonville, and Tallahassee, Florida, Messrs. Jackson, Lawton & Bassinger, of Savannah, having been actually retained by me as such counsel, and Mr. Pope, of the same place, Mr. T. W. Brevard, of Tallahassee, and Messrs. Sanderson and H. Bisbee, jr., of Jacksonville.

To time actually spent in such consultations, and expenses between Tallahassee, Savannah, and Jacksonville.

To attendance on H. Bisbee, jr., and the preparation and drafting of a bill in equity in a proceeding before Judge Frazer instituted on or about the 19th day of March, 1869.

To attendance on the argument before Judge Frazer in the said action.

To Mr. Bisbee's counsel fee in the said action with costs and disbursements.

To attendance upon Messrs. Jackson, Lawton and Bassinger, and the preparation and drafting amendment to the bill in equity in this action. To attendance upon motion for injunction before the honorable Judge Woods, at Montgomery, in Alabama, and expenses paid on the journey.

To subsequent attendance before Judge Woods, at Savannah,
756 Georgia, and Jacksonville, Florida, expenses and counsel fees.

To attendance before his honor Judge Bradley on argument for junction on appeals of orders. The foregoing proceedings were continued from the year 1866 down to the year 1877, during which time I ar-

ranged at least from three to five journeys to the South in each year, bearing my own expenses, and spending considerable time with counsel in the obtaining of evidence in the examination of records and proceedings and documents, in visiting public officers, and generally in performing all the details necessary in and about a suit of that kind against public officers who were resisting to the utmost my claims.

During some of the time I had frequent interviews with gentlemen in New York, who represented in one form or another the funds belonging to the Internal-Improvement Fund, in the city of New York, and exerted myself in obtaining documents, copies of papers, letters, &c., incident to and necessary to the prosecution of the proceedings in Florida and in New York. The action of public officers and their agents in Florida and New York, having been co-incident and all relating to the same matters, and the evidence in New York being
757 as important in many respects to the suit in Florida as the evidence was which I obtained in Florida itself. I acted singly and alone in all these matters, excepting so far as I was assisted by counsel, attorneys, and agents. I was obliged to confer with a great many persons and to consult with counsel at every step, for I was bitterly opposed and found great difficulty in obtaining information from many quarters where it was to be had, owing to the fact that the parties in interest against me rendered all the opposition and procured all the opposition from others within their power.

I am unable to state exactly the number of days spent by me, but I am able to state, however, distinctly, that I spent at least three quarters of all these years in and about the various services which this proceeding required. I had to initiate and inform the various people with whom I came in contact of the facts. I was from time to time put off and delayed by the various parties in interest and their agents, and the whole proceeding was necessarily tedious and cumbersome,
758 detailed and prolonged, and but for my persistence and constant attention from day to day it is my deliberate judgment that I should have failed in obtaining the redress which finally was obtained in the suit.

I submit in this action the various papers and documents so far as I have been able to obtain the same in and about said suit, and to give a general idea of the proceedings themselves. To proceedings taken in this court to obtain the appointment of a receiver in the State of Florida, including various consultations with counsel on the subject, and the obtaining of information, preparing memoranda, making oath to documents prepared by counsel, and their necessary attendance in and about such motion; the motion was heard before his honor Judge Frazer. A receiver was appointed in the said proceeding. To attendance upon motions made for the purpose of obtaining reconveyance of lands, and the sale of lands in the State of Florida, the proceeds of which sale had been brought into court in this action.

These proceedings were particularly onerous and detailed, in-
759 volving a great deal of necessary consultation with all the various counsel before named, all of whom acted and took part in such proceedings, which were, in reference to the issue of the case, very careful and important.

During the progress of the proceedings hereinbefore referred to, the defendants made several applications to dissolve the injunction obtained, and generally to defeat the claims and equities set forth in my bill. Such opposition was very active and constant, and required close attention in order to meet it with any degree of success. I attended

upon the courts and upon the counsel in reference to such application, and gave nearly my whole time to the continuous supervision and attendance upon counsel. The defendants were constantly evading the due execution of the orders of the courts, and applications on our part for proceedings for contempt of court, and to compel them to obey the orders of the court became frequently necessary, and my attendance was constantly insisted upon by my counsel, and was given, together with my services in obtaining information, getting copies of pa-
760 pers, and general negotiations, and the attention which such proceedings necessarily involved, was such that my whole time while at the South, and in New York, and in the North, was occupied in and about these proceedings.

Incidental to the prosecution of the claim at the South, were suits instituted in the State of New York, in the supreme court of that State, for the purpose of obtaining an appropriation of the funds on deposit in the city of New York, belonging to the Internal-Improvement Fund of the State of Florida. Those proceedings were very complex, and I required and received the aid of several counsel in and about the same. I retained Messrs. Evarts, Southmayde and Choate, and frequently advised with them in and about the proceedings. I also retained G. & J. B. Broome, T. R. Strong, John H. Whiting and T. C. T. Buckley, since deceased. A bill was filed in the said court and a receiver appointed for the fund. Several motions were made in the progress of the case for injunctions, and there was also a suit in which an attach-
761 ment was issued in order to preserve the fund and prevent its being carried away from the State. I spent several months in the city of New York in attendance upon counsel, and negotiating with the agency in New York, and gen rally in advancing the suit as rapidly as it was possible. I was advised that it was necessary for me also to take proceedings in the State of New York against Mr. Yulee and the Florida Railroad Company, and Mr. Marshall O. Roberts, and others, as claiming to be the purchasers and owners of the Florida Railroad, and accordingly a suit was commenced, in the nature of a bill in equity, against those gentlemen, in which long and very carefully conducted proceedings were had in the supreme court of the State of New York. That suit was a particularly harrassing suit, taking all my time and attention, and giving me a great deal of trouble and necessary expense in and about the proceedings. I appealed in that suit, and the judgment as to Yulee was reversed, but as to Msrshall O. Roberts and the others it was affirmed, more particularly, as I am advised and
762 believe, because the order was not recorded as an appealable order.

All these various suits and proceedings were incidental to and necessarily related to the first subdivision in the order mentioned, because they all bear upon that end and had for their ultimate object the production of all the moneys properly belonging to the Internal-Improvement Fund of the State of Florida, and the depositing of them in court, which was the principal relief which these various proceedings had in view. The results that have been attained by this litigation are quite apparent, and appear from the decrees of the court from time to time, which are all of record, but I will give a brief summary of these results.

First. Ten millions of acres of land belonging to the Internal-Improvement Fund have been rescued from waste and spoliation.

Second. Moneys to the amount of upward of one hundred thousand

dollars, lying at the time either in Florida or in New York, have also been rescued from waste and spoliation.

763. Third. Immense bodies of land, selected from the fund and actually conveyed, have been restored.

Fourth. The claims of parties holding coupons made void by fraud have been successfully resisted, a large amount of them in dollars and cents have been rejected, and others are now undergoing strict and systematic investigation.

(J. M. Baker, esq., solicitor for the defendants, objects to the answer to the general redirect question by complainants' solicitor on the following grounds:

1st. That the same is vague, indefinite, argumentation, and to a large extent consists *to* of the opinions of the witness.

2d. That any testimony in relation to suits in New York is immaterial and irrelevant.

3d. That the records of the court are the best evidence to prove the results of this suit.)

764 In the United States circuit court for the northern district of Florida, fifth judicial circuit.

FRANCIS VOSE ET AL.
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND OF FLORIDA.

The protest or exception of Bradley Martin, Charles Du Bignon, and others, coupon-holders, parties complainants, by decree of said court in the above-entitled cause made before and filed with Hon. A. R. Meek, special master to take testimony in the matter of the expenses of Francis Vose, taxable against the fund, in the hands of Hon. A. Doggett, general master and receiver.

FIRST EXCEPTION.—There has been no notice by said special master on said protestants of the time or place or fact of taking testimony in said matter.

SECOND EXCEPTION.—There has been no sufficient or legal notice of intention to take testimony in said matter on said pro-
765 testants by said Francis Vose, or his counsel.

THIRD EXCEPTION.—The testimony taken was ex-parte, and much of it otherwise illegal and altogether inadmissible, being, as these protestants are informed, F. Vose's own testimony taken before said special master many months since (without any notice whatever to parties in interest) as to his own personal expenses, &c., and supported by a mass of receipts as vouchers, which protestants have had no opportunity of examining, and to the admission of which protestants would have objected had they been present.

BRADLEY MARTIN,
CHAS. DU BIGNON, & OTHERS,
By C. P. COOPER, *Att'y*, &c.

766 (Indorsed:) Francis Vose vs. The Trustees of the Internal-Improvement Fund of Florida. Exceptions of Bradley Martin, Charles Du Bignon et al. to the taking testimony in said matter. Filed with me, Dec. 4, '77. A. R. Meek, special master; C. R. Cooper, att'y for exceptions.

767 In U. S. circuit court, northern district of Florida. In chancery, before A. R. Meek, master.

FRANCIS VOSE
vs.
THE TRUSTEES' INTERNAL-IMPROVEMENT Fund et al.

A. Doggett, master in said cause, states that as such master he made a report to said court in which was shown the aggregate number of acres of land belonging to said fund; that he did not keep a copy of said report, it having been very voluminous, and that said report cannot now be found among the records or papers of said cause. To the best of the master's present recollection, said report showed that at the time of the filing thereof, there were between nine or ten millions of acres of lands belonging to the internal-improvement fund of the State of Florida. Since the filing of said report, it has been rumored that there has been an accession to said fund of many thousand of acres of land.

Jacksonville, December 31, 1877.

A. DOGGETT, *Master.*

(Indorsed:) In U. S. cir. court, northern district of Fla. Francis Vose vs. The Trustees et al. Statement of A. Doggett, master.

768 In circuit court U. S., northern district of Florida. In chancery.

FRANCIS VOSE
vs.
THE TRUSTEES INTERNAL-IMPROVEMENT Fund et al.

The undersigned, as receiver in said cause, has received in cash one hundred and forty-five thousand three hundred and eighty-two $\frac{18}{100}$ dollars ($145,382.18). Of this amount forty-seven thousand and two hundred $\frac{94}{100}$ dollars ($47,200.94) were derived from the sale of assets of sinking fund and semi-annual payments by Florida Railroad Company on account of said fund. The balance, ninety-eight thousand one hundred and eighty one $\frac{22}{100}$ dollars ($98,181.22) were derived from the sales of lands.

There is a cash balance now on hand of forty-two thousand five hundred and seventy $\frac{97}{100}$ dollars ($42,570.97.)

Jacksonville, December 31, 1877.

A. DOGGETT, *Receiver.*

(Indorsed:) F. Vose vs. The Trustees et al. Statement of A. Doggett' receiver, as to receipts, &c.

769 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

The matter in said cause states that at this date he has in his custody coupons aggregating four hundred and sixty-eight thousand five

hundred and thirty-six $\frac{25}{100}$ dollars, said coupons having been issued under the act of 1855.

Jacksonville, December 31, 1877.

A. DOGGETT, *Master.*

(Indorsed:) In U. S. cir. court, north. district of Florida. Francis Vose vs. The Trustees et al. Statement of A. Doggett, master, in relation to coupons.

770 *Statement of cash advances, being disbursements made by Francis Vose in sundry suits and proceedings arising from the non-payment of coupons of bonds of the Florida R. R. Co., guaranteed by the Trustees of the Internal Improvement Fund of Florida.*

1. M. D. Papy:

1866.				
Nov.	14.	Counsel fees about collecting coupons, I. I. fund		50
		2. J. M. Arcany:		
Nov.	14.	Att'y fees, do. notice to Fla. R. R. Co., &c		15
		3. Evarts, Southmayd & Choate:		
Dec.	27.	Taxed costs & disb't in suit upon I. I. bonds	331 06	
"	"	Counsel fee in do. & advance in do. various times	500	
1867.				
Jan'y	30.	Sheriff's fees, John Kelly, in same case	109	
"	31.	Counsel " in relation to Fla. bonds	50	
Ap'l	16.	Exemplification of judgment	10 50	
"	"	Do. do.	3	
Oct.	1.	Att'y fees as to I. I. bonds	200	
1868.				
Mc'h	26.	" drawing notice to trustees, do	10	
Sept.	9.	Preparing papers, proceedings in Fla	50	
"	"	Register's fees & clerk's certificates	7	
"	30.	U. S. comm'r taking deposition	20 29	
1870.				
Nov.	8.	Ex. G, papers & advice in suits in Fla	35	
1872.				
Ap'l	5.	Telegrams to Fla	3 58	
"	"	Exemplification of judgment	12	
June	12.	Exam'g papers & mem. for counsel	50	
Oct.	15.	Do. & advice	25	
Nov.	2.	Opinion on ques. on I. I. fund ac't	50	
1873.				
Ap'l	21.	Ex'g papers & advice as to suit vs. Trustees	25	
June	12.	Do. do.	25	
"	"	Counsel fees prep. & trying case in supreme co	250	
Sept.	13.	Do. ex'g case on appeal " "	25	
Dec.	30.	Counsel fees & services col. money from rec	350	
1875.				
Oct.	21.	Do. arguing case in general term	250	
				2,391 43
		Forward		2,456 43
771		Bro't forward		2,456 43
		4. Dewson & Livingston:		
1867.				
May	11.	Fees taking testimony		75
		5. J. E. & J. B. Broome:		
1867.				
Ap'l	23.		35 00	
1868.				
Feb'y	18.	Costs in suit ag't Trustees I. I. Fund	63	
				98

6. E. M. Randall:

1868.						
June	4.	Counsel fees in suit vs. Fla. R. R. Co		100		
1874.						
Ap'l	11.	Do.	do.	Trustees I. I. Fund	250	
1876.						
Feb'y	7.	Do.	do.	do.	250	
May	16.	Do.	do.	do.	250	
1877.						
Feb'y	8.	Do.	do.	do.	250	
						1,100

7. Foster & Thomson:

1868.					
Aug't	18.	Deposition protesting Fla. R. R. notes			50

8. W. P. Dockery, cl'k of c't:

1868.					
Oct.	6.	Fees as clerk of the court			75

9. J. S. Adams:

1868.					
Dec.	3.	Att'y fees preparing & printing I. I. acts, &c			100
1868.					
Dec.	17.	" " suits vs. Trustees I. I. Fund, Fla		100	

10. T. R. Strong, & Strong & Sheppard:

1869.					
Mc'h	4.		R. R. Co., &c.	100	
"	6.	Printing complaint, &c., &c., I. I. Trustees		35	
May	3.			150	
July	27.			100	
Sept.	9.			100	
Oct.	2.			100	
Nov.	5.			150	
"	15.	Printing		39 70	
1870.					
Feb'y	17.			100	
Mc'h	13.			150	
July	22.			200	
Oct.	1.			428 79	
		Forward		1,753 49	3,954 43
772		Bro't forward			3,954 43
		T. R. Strong & Strong & Sheppard (continued) bro't forward		1,753 49	
Jan'y	7.			358 79	
June	24.			327	
July	29.			289 21	
Nov.	7.			172	
1872.					
Jan'y	15.			70 32	
Ap'l	17.			100	
June	14.			124 64	
"	"			100	
Nov.	2.			264	
Dec.	4.			100	
1873.					
M'ch	14.			200	
Apr.	24.			174 89	
June	27.			200	
July	26.			200	
"	"			224 07	
Nov.	6.			50	
"	"			90	
1874.					
Jan'y	15.			171 26	
"	"			100	

Apr.	22.		100	
May	23.		143 75	
1875.				
Feb'y	13.		10	
June	2.		30	
"	2.		55 70	
Oct.	11.		45	
"	"		50	
"	"		55	
Nov.	8.		131 20	
1876.				
Jan'y	20.		420 53	
M'ch	2.	S. Hand. Yulee's case	250	
July	3.	Yulee's case	30	
				6,390 85
		Forward		10,345 28
773		Bro't forward		10,345 28

11. T. C. T Buckley.

1869.				
Oct.	25.	Counsel fees try case Fla. R. R. in sup. c't., N. Y	250	
Nov.	20.	Do. do.	100	
				350

12. H. Bisbee, jr:

1869.				
M'ch	15.	Retaining fee in suit vs. Trustees I. I. Fund	100	
1870.				
June	8.		100	
July	16.		100	
Aug't	30.		100	
Sept.	26.		100	
Nov.	3.		100	
Dec'r	7.		100	
1871.				
Jan'y	14.		100	
Ap'l	29.	Going to Savannah	20	
May	8.		100	
"	30.		120	
July	4.		06	
Nov.	14.	Taking testimony	010	
1872.				
M'ch	19.		100	
July	25.		75	
1873.				
June	13.		50	
1874.				
Ap'l	9.		100	
1876.				
Feb'y	8.	Paid by court & charged F. V	387 99	
"	"	Com. & ex'ge on A. Doggett's remittance	9 20	
1873.				
Dec'r.		Paid him by court	500	
1876.				
Feb'y.		Do.	388	
				2,810 19

13. Magruder Marshal:

1869.				
June	4.	Costs in cases by Randall		.91

14. Kelly:

1869.				
June	11.	Testimony in Fl'a R. R., &c	22 50	
Oct.	4.	Taking testimony do.	22 40	
Nov.	13.	Do. do.	31 60	
				76 50
		Forward		13,672 97
774		Bro't forward		13,672 97

15. J. N. Whiting:

1870.				
Ap'l 22.	Counsel fees in suit vs. Trustees I. I. Fund		100	
1876.				
Jan'y 20.	Do.	do.	250	
				350

16. D. S. Walker:

1870.				
Jan'y 26.	Counsel fees in suits vs. Trustees I. I. Fund			1,120

17. Jackson, Lawton & Bassinger:

1870.				
Oct. 12.	Retainer fee in suits vs. Tr. I. I. Fund		500	
" 28.	To Montgomery		297 50	
1872.				
Ap'l 20.	Printing in above suit		26 50	
" 16.	Att'y fees	do.	250	
July 3.	Do.	do.	300	
Aug. 27.	Printing		15	
1873.				
Dec'r.	Paid them by court		4,700	
1874.				
May.	Do.		5,436	
1877.				
	(Error:)			
Jan'y 4.	Att'y fees in suit vs. Trustees, &c		500	
June 21.	Do.	do.	4,848 28	
			3,250	
			3,250	
				23,173 28

18. T. R. Brevard:

1870.				
Dec'r 14.	Retained in suit vs. Trustees I. I. Fund		100	
1876.				
Dec'r 31.	Counsel fees	do.	500	
				600

19. J. P. Sanderson:

1871.				
Jan'y 14.	Counsel fees in suit vs. Trustees I. I. Fund, Fla. R. R. Co			286
	Forward			39,202 25
775	Bro't forward			39,202 25

20. R. B. Hilton:

1869.				
Dec'r 4.	Att'y's fees taking testimony, &c., in suit I. I. Fund		105	
1871.				
Feb'y 27.	" " " " &c		200	
Mar. 16.	Taking testimony		100	
1874.				
Ap'l 4.	Att'y fees, taking testimony, &c		50	
1876.				
Mar. 21.	Do.		125	
1877.				
Feb'y 1.	Do.		125	
				705

21. J. D. Pope:

1871.				
May 5.	Retainer in suit vs. Trustees I. I. Fund		150	
" 19.	Exp's to Jacksonville	do.	100	
Aug't 20.	Counsel fees, &c.,	do.	100	
				350 00

22. A. Doggett:

1871.					
Nov. 17.	To Tallahassee			75	
Dec'r 5.	Taking testimony			60 93	
" "	Do.			20	
1872.					
Feb'y 8.				40	
" 10.				11	
" 21.				10	
" 22.				39	
M'ch 2.				22	
" 9.				25	
Ap'l 25.				10	
May 15.				15	
1873.					
Oct. 10.	Copies			26 50	
1875.					
M'ch 25.	Do. of reports for 1874			55 01	
May 11.				3 50	
1876.					
Ap'l 25.				38 40	
1877.					
Jan'y 24.				34 12	
					485 46
	Forward				40,742 71
776	Bro't forward				40,742 71
1871.					

23. S. Conant, marshall:

Jan'y 18.	Fees			68 12	
Nov. 2.	Do.			59	
1872.					
May 10.				18	
Dec'r 26.				29	
1873.					
Apr. 11.	Fees			31 92	
					206 04
1874.					
June 20.	" by J. L. & B			121 92	
1871.					

24. H. A. Corley:

Apr. 6.	Exp's to Tallahassee			25	
1875.					
Apl. 3.	Do. & salary; attends to lands, coupons, trespassing, &c			71 75	
May 1.	Do.	do.		135	
" 20.	Do.	do.		22 90	
" 28.	Exp's to Jacksonville, Tall., &c., & salary			100	
" "	Do.	do.	do.	40 90	
July 23.	Do.	salary, &c		72 10	
" 27.	To ⅛ salary			35	
Aug't 14.	Do.			30	
Sept. 11.	Salary			100	
Nov. 16.	Do.			75	
Dec'r 2.	Do.			100	
" 16.	Do.			50	
1876.					
July 1.	Do.			50	
" 13.	Do.			100	
1877.					
Jan'y 16.	Do. & expenses			148 02	
					1,155 67

25. J. E. Townsend, clerk of court:

1870.					
Nov. 12.	Fees in suit vs. Trustees I. I. Fund			17 10	

1871.					
Dec'r 16.	Copying decree			7 50	
1877.					
May 15.				37	
June 1.				50	
Dec'r 19.				75	
1873.					
Ap'l 3.				15	
1874.					
Jan'y 20.				8	
					209 60
1874.					
M'ch 16.	By J. L. & B			96 25	
	Forward				42,314 02
777	Bro't forward				42,314 02
1872.					
	26. B. R. Curtis:				
Aug't 27.	Counsel fees in suit in Fla., Trustees, I. I. Fund			250	
1876.					
Jan'y 20.	Do.	do.		500	
					750
1872.					
	27. C. P. Cooper:				
May 19.	Att'y fees				25
	28. J. J. Finley:				
1872.					
M'ch 28.	Att'y fees in suit vs. Trustees I. I. Fund			100	
June 1.	Do.	do.		100	
Aug't 2.	Do.	do.	stating testimony, &c.	50	
1873.					
M'ch 7.	Do.	do.		50	
" 25.	Do.	do.		50	
Oct. 13.	Do.	do.		50	
1874.					
Nov. 1.	Do.	do.		50	
1875.					
May 11.	Marshall fees serving subpœnas			4 50	
" 28.	Att'y fees in suit vs. Trustees I. I. Fund			100	
					554 50
1875.					
	29. S. Y. Finley:				
Dec'r 22.	Retainer in suit vs. Trustees I. I. Fund				50
1873.					
	30. J. B. C. Drew:				
Nov. 29.	Taking testimony			20	
1874.					
Jan'y 21.				45	
Oct. 22.				75	
Dec'r 4.				10	
1875.					
Feb'y 10.				125	
Dec'r 31.				10	
1876.					
Jan'y 22.				100	
" 20.				10	
M'ch 7.				30	
May 21.	Record decree			25	
June 22.	From & to Washington			30	
Oct. 7.				15	
" 28.				10	
" 30.				25	
	Forward			530	43,693 52
778	Bro't forward				43,693 52
	Bro't forward			530	
	J. B. C. Drew, continued:				

1873.					
		Bro't forward	1,649	45	
M'ch	25.	Travelling expenses	200		
1876.					
July	3.	Paid T. G. Strong to 1st Jan'y	15		
Oct.	2.	" do court of appeals	130		
"	10.	" judgment	4,888	71	
					6,928 16
1866.					
		40. Sundry items:			
Nov.	14.	Telegrams, copies of papers, &c	43	30	
1867.					
Jan'y	25.	E. Winslow, emigration com'r	20		
1869.					
Apr.	21.	Marshal & clerk's fees	40		
May	1.	Costs, services, telegrams, &c	50		
Dec'r	16.	Bal. of costs in cases agt. trustees	76	34	
1870.					
June	26.	Adams Express on coupons, S. D. Walker	54		
1873.					
Dec'r	31.	Telegrams, copies of judg't rolls, legal papers, orders, testimony, &c	234		
1874.					
Jan'y	14.	J. Simson, making up account	25		
Feb'y	16.	McIntosh, copying, $20, Ap'l. 3, $30	50		
M'ch	17.	J. Simson, making up $\frac{3}{4}$c	25		
June	10.	Copying tel'g's $10, Oct. 15, $30	40		
Sept.	7.	Tel'g's $10, 10th, $15, Oct. 15, $15	40		
Oct.	6.	E. Mowatt for expenses on bond	25		
Dec'r	24.	A. M. Jones, copying records, &c	25		
1875.					
Sept.	3.	J. Finnegan for records	50		
M'ch	18.	A. M. Jones, bal. making up coupons	50		
July	23.	Sundries at Fla	27	90	
Aug't.	14.	Sundries	18	57	
Sept.	17.	Tel'g's $15, to N. Y. $10	25		
"	"	" fees	36	17	
Dec'r	4.	Table & press $25, Mitchell $13	38		
"	"	Tel's $10.20, tel'g's, &c. $55	65	20	
"	11.	J. P. Greeley, office at Jacksonville	53		
1876.					
Jan'y	22.	Copies $15, Feb'y 17, $12, Feb'y 20th, 10.00	37		
	20.	Tel'g. $10, 22d, $10, Feb. 17, $12, Apr'l 10th, $11.15	43	15	
Feb'y	14.	J. Simson, accountant	6'	67	
"	24.	A. Woodruff, legal agent	60		
May	18.	Tel'g's $10, 22d $10	20		
		Forward	1,333	30	57,822 31
782		Bro't forward			57,822 31
		Bro't forward	1,333	30	
1876.					
		Sundry items, continued:			
Jan'y	22.	Carriages, $10; May 18, $12; 22d, $10	32		
"	20.	Petties, $10; 22d, $17 39; M'ch 19, $20	47	39	
Ap'l	8.	do $4.20; 20th, $13.88; May 18, $25	43	08	
"	22.	Green, for surveys	21		
June	13.	W. Lee Althrop to $\frac{3}{4}$ of I. I. Lands	30		
"	15.	A. Woodruff, legal agent	60		
"	21.	J. Simson, accountant	52		
Nov.	18.	Petties, $4.50; Dec'r 4, $17.20; 20th, $21.75; 31st, $27.	70	45	
Dec'r	3.	J. B. Stebling, for information	12		
"	"	Thomas, $10; 19th, $25; board, $12; 31st, $22	69		
"	8.	Greeley, 1 y'r rent, $120; less tax, $10	110		
"	22.	Jas. Green, examining land tress	41	10	
"	25.	Copies	6		
					1,927 32
1866.					

41. F. Vose's expenses:

Oct. 25. 1867.	R. R. fares, hotel bills, &c			400	
July 23. 1868.	"			654 50	
Dec. 12. 1869.	"			825	
June 1.	"		675 00		
Dec'r 31.	"		959 22		
				1,634 22	
1870.					
Dec'r 15. 1871.	"			1,532 35	
M'ch 27.	"		509 40		
Dec. 16.	"		1,050 99		
Sept. 19.	"		142 50		
				1,702 89	
1872.					
Dec'r 26. 1873.	"			1,366 25	
Dec'r 31. 1874.	"			1,043 05	
Dec'r 31. 1875.	"			1,703 90	
Dec'r 31. 1876.	"			2,691 81	
June 30.	"		980 08		
Dec. 1.	"		120 50		
Nov. 19.	"		68 60		
" 15.	"		129		
Dec'r 6.	"		41 45		
" 31.	"		109 75		
				1,449 38	
					15,003 35
Forward					74,752 98
Bro't forward					74,752 98

783 *Interest on disbursements to 31st Dec'r, 1876, @ 7%, leaving for adjustment subsequent interest and that on payments since 31st Dec'r, 1876.*

		Principal.	Years.	Interest
1866.	Amount this year as due June 30.			
1867.		$1,339 36	10½	$ 984 43
1868.	.... do ..... do	1,400 29	8½	833 17
1869.	.... " ..... "	3,297 76	7½	731 32
1870.	.... " ..... "	5,234 74	6½	2,381 81
1871.	.... " ..... "	4,826 44	5½	1,858 18
1872.	.... " ..... "	5,055 29	4½	1,592 41
1873.	.... " ..... "	8,996 88	3½	2,204 23
1874.	.... " ..... "	9,662 94	2½	1,691 01
1875.	.... " ..... "	6,031 96	1½	633 36
1876.	.... " ..... "	14,724 10	½	515 34
1877.	.... " ..... "	13,026 22	"	" "
1867.	.... " ..... "	1,157	9½	769 40
	Principal	$74,752 98	"	" "
	Interest @ 7% to 31 Dec. '76			$15,194 66

784 *Statement of claim of Francis Vose for services rendered by him between the years 1866 & 1876, both inclusive, in various "Florida suits," in Florida and elsewhere.*

42. Services between the years 1866 & 1876, both inclusive, say 11 years @ $2,500 p. a'm; the same being considered as due at the end of each year	$27,500
Interest on $25,000 for 5½ years av. @ 7%, $9,625 as detailed below, viz.:	
$2500 for 10 yrs @ 7% $17,50	

2500 " 9 " " "	15,75	
2500 " 8 " " "	14,00	
2500 " 7 " " "	12,25	
2500 " 6 " " "	10,50	
2500 " 5 " " "	8,75	
2500 " 4 " " "	7,00	
2500 " 3 " " "	5,25	
2500 " 2 " " "	3,50	
2500 " 1 " " "	1,75	
		9,625
$25,000		
11 years, with interest on 10 years, due 31 Dec'r, 1876		$37,125
Amount of disbursements	$74,752 98	
Int. to 31 Dec'r, '76, @ 7% on $61,726 76	15,194 66	
		89,947 64
Claim for services as above, 11 yrs. @ $2,500	27,500 "	
Int. on do @ 7% " to 31 Dec., '76	9,625	
		37,512
Total		
Add 1% to make legal interest on $102,252.98	$3,545 66	$127,072 64
" 1 year's int. from Dec'r 31, '76, to Dec. 31, '77 on do	8,180 23	
		11,725 89
		$138,798 5

(Indorsed:) U. S. circuit court. No. district of Florida. Vose vs. Trustees of I.-I. Fund. Statement of expenses of litigation collecting monies protecting Internal-Improvement Fund of Florida, investing railroad coupons, &c., 1866–1877. Exhibit B. Filed Aug. 20th, 1877. A. R. Meek, special master.

Filed this 2d day of January, A. D. 1878.

PHILIP WALTER, *Clerk.*
By SIMON BAER,
Deputy Clerk.

785 [Office of Foster & Thomson, attorneys & counsellors, 69 Wall st.]

NEW YORK, *Aug.* 15, 1868.

FRANCIS VOSE, Esq.,

DEAR SIR: Be pleased to send us a cheque for $50; $25 paid U. S. commissioner for taking depositions in your case ag't Yulee & $25 for our services in the matter.

Yours truly,

FOSTER & THOMSON.

P'd Aug. 18, '68.

1868. No. 8. Foster & Thomson, 15 Aug't, $50.
Filed Jan. 2, 1878. P. Walter, clerk.

786 JACKSONVILLE, FLORIDA, *April* 5, 1877.

Received of Francis Vose, the following monies for counsel & services in relation to suits of Vose against The Trustees of the Int. Imp. Fund et al., viz: April 11th, 1874, $250; Feb. 7th, 1876, $250; May 16th, 1876, $250; Feb. 8th, 1877, $250. Total, $1.000.

E. M. RANDALL.

(Indorsed:) Voucher 6. E. M. Randall. $1,000. Filed January 2, 1878. P. Walter, clerk.

JACKSONVILLE, *June* 4, 1868.

Received of Francis Vose one hundred dollars on account of suit

against the Florida Railroad & D. L. Yulee, in U. S. circuit court N. dist., Florida.

E. M. RANDALL.

(Indorsed:) Voucher 7. E. M. Randall. Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLE, *Jan'y* 14, 1871.

Received of Francis Vose by H. Bisbee, jr., two hundred and eighty-six dollars in full for professional services to date.

J. P. SANDERSON.

(Indorsed:) Vouch' 13. 1871. J. P. Sanderson. $286. Jan'y 14. Filed Jan. 2, 1878. P. Walter, clerk.

NEW YORK, *Ap'l* 22, 1870.

The National Bank of the Republic, J. N. Whiting, esq. or bearer, one hundred dollars.

$100.

F. VOSE.

(Indorsed:) No. 11. Filed Jan. 2, 1878. P. Walter, clerk. John M. Whiting.

787 NEW YORK, *Nov.* 19, 1869.

The National Bank of the Republic, pay to T. C. T. Buckley, esq. or order, one hundred dollars.

$100.

F. VOSE.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.
Theo. C. T. Buckley:
For deposit in Second National Bank of New York, to credit of the treasurer of the Manhattan Club.

JNO. H. FREES.

Second National Bank. Paid. New York.

NEW YORK, *June 8th*, 1870.

The National Bank of the Republic, pay to Col. H. Bisbee, jr., or order, one hundred dollars.

$100.

F. VOSE.

(Indorsed:)
Pay to order of Lewis & Co.

H. BISBEE, JR.,
LEWIS & CO.

Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

Rec'd of F. Vose, fifty dollars retainer for professional services in his matters in the U. S. courts.

May 6th, 1875.

W. R. ANNO.

(Indorsed:) No. 23. 1875. W. R. Anno. $50. May 6. Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

JACKSONVILLE, FLA., *May* 17, 1872.

Rec'd of F. Vose, esq., twenty-five dollars for professional services up to date.

$25.

C. R. COOPER,
Att'y, &c.

(Indorsed:) Vou. 20. C. P. Cooper. Filed Jan'y 2, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

788

NEW YORK, *June* 11, 1869.

Rec'd from F. Vose $22.50, payment in full for testimony & attendance in case of Vose vs. Florida R. R. Co. up to date.

M. J. KELLY,
79 *Nassau.*

(Indorsed:) Filed Jan'y 2d, 1878. P. Walter, clerk.

FRANCIS VOSE
vs.
FLA. R. R. CO. ET AL.

NEW YORK, *Oct. 30th*, 1869.

Mr. Francis Vose, to M. J. Kelly, Dr., phonographer and law reporter, 79 Nassau street.

August	10th.	Attendance		$5 00
September	4th.	Do	notes	5 00
"	11th.	"		5 00
"	21st.	"	notes	5 00
"	25th.	"		5 00
Oct.	8th.	"	notes	6 60
				$31 60

Received payment,

M. J. KELLY.

The above bill is correct. Mr. Yulee owes Mr. Vose $15 of the amount for failures to attend at appointments, but Mr. Vose is primarily liable to Mr. Kelly and must take to Yulee to refund.

J. E. J. D. BROOME.

(Indorsed:) Voucher 10. 1869. Kelly. 3 vouchers in 1869. $6.50 in all. Filed January 2, 1878. P. Walter, clerk.

N. Y. *Oct.* 4, 1869.

VOSE, PL'FF,
vs.
DICKERSON ET AL.
To M. J. Kelly.

To transcript of stenographeis notes:

Sept.	4th, 1869.	To transcript		$10 00
"	21st, "	"	"	12 40
				$22 40

Rec'd payment,

M. J. KELLY.

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.

789 In the U. S. circuit court, north. dist. of Florida.

F. VOSE
vs.
TRUSTEES OF INT. IMP. FUND OF FLORIDA.

Rec'd this 26th day of January, A. D. 1876, of F. Vose, balance due upon fees is this cause covering all contingencies hereafter agreed upon.
$500. T. W. BREVARD, JR.

(Indorsed:) Filed Jan. 2d, 1878. P. Walter, clerk.

TALLAHASSEE, *Nov.* 5, 1870.

Received of Francis Vose the sum of one hundred dollars for professional services to be rendered him in such cases as he may be concerned in now pending in the U. S. circuit court at Florida. Should the application for the injunction now pending in the said court succeed an additional fee of five hundred dollars to be paid, me out of the first moneys collected upon his claims against the Int. Imp. Fund of Florida.
$500. T. W. BREVARD, *Att'y.*

(Indorsed:) Voucher 12. 1870. T. W. Brevard, $100. Nov. 5. Filed Jan. 2, 1878. P. Walter, clerk.

790 NEW YORK, *Nov.* 14, 1866.

National Bank of the Republic, pay to Mr. J. M. Amemx, or or order fifteen dollars.
$15. F. VOSE.

(Indorsed:) No. 2. J. M. Amemx.
Pay to the order of Savage & Haile.
J. M. ARNENX.

Pay to the order of Biernwirth & Rocholl, by Pine st. N. Y.
SAVAGE & HARLE.

Biernwirth & Rocholl.

Filed Jan. 2, 1878. P. Walter, clerk.

NEW YORK, *Jan'y* 25, 1867.

National Bank of the Republic pay to Edw'd Winslow, esq., or order, twenty dollars.
$20. F. VOSE.

(Indorsed:) No. 2. E. Winslow. Edw. Winslow.
Pay to the order of the American Exchange National Bank.

Filed Jan. 2, 1878. P. Walter, clerk.

791 SAVANNAH, *May 5th*, 1871.

Pay to the order of Hon. J. D. Pope, one hundred and fifty dollars.
$150. F. VOSE.
The NATIONAL BANK OF REPUBLIC, *New York.*

(Indorsed:) Filed Jan. 2d, 1878. P. Walter, clerk.
J. D. Pope.

Pay I. L. Went, cashier, or order, collected for account of—
J. H. JAMES.

W. H. PATTERSON, *Att'y.*

The National Park Bank of New York.
Paid.

SAVANNAH, *May* 5, '71.

Sixty days from date, for value received, I promise to pay to Hon. J. D. Pope, one hundred dollars.
$100. F. VOSE.
(Across the face:) Paid Sept. 4, 1871.
J. D. POPE.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLE, *May* 19, '71.

Pay to the order of J. D. Pope, esq., one hundred dollars.
$100. F. VOSE.

To the NATIONAL BANK OF REPUBLIC, *New York.*

(Indorsed:) Vouch. No. 15. Filed Jan. 2d, 1878. P. Walter, clerk. By S. Baer, deputy cl'k.
J. D. Pope.
Pay I. L. Went, cashier, or order for collection, account of—
J. H. JAMES.
W. H. PATTERSON, *Att'y.*
The National Park Bank of New York.
Paid.

792 [Metropolitan Hotel, Togni & Bettelini, proprietors.]

JACKSONVILLE, FLA., *June* 1, 1872.

Received of F. Vose, one hundred dollars on account, in the case of Self vs. The Trustees of the Internal-Improvement Fund of Fla. et als. I having received one hundred dollars on same account heretofore.

J. J. FINLEY, *Att'y, &c.*

The above for taking testimony & attending to case, hearing for decree, attachment for contempt, a receiver in April & May.
(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

No. 1841.] NEW YORK, *March* 25, 1873.

The National Bank of the Republic, of the city of New York, pay to the order of J. J. Finley, fifty dollars.
$50. F. VOSE.

(On the margin:) Voucher D, Broadway, cor. Wall st.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.
J. J. Finley.
Pay Howes & Macy or order, for collection, on acct. of Ambler's Bank.
SAM'L I. BRIGS, *Cash.*

Howes & Macy. By L. H. Combet, att'y.

Rec'd of F. Vose, esq., fifty dollars on account, for professional services (in relation to taking the testimony of Cowgill at Tallahassee.
Oct. 15th, 1873.

J. J. FINLEY, *Att'y, &c.*

(On the margin:) Voucher D.

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.

793 NEW YORK, *Nov.* 1*st*, 1874.

The National Bank of the Republic, of the city of New York, pay to the order of J. J. Finley, fifty dollars.
$50. F. VOSE.

(On the margin:) Voucher D, Broadway cor. Wall st.

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.
J. J. Finley.
Furchgott, Benedict & Co., pay Geo. I. Sany, esq., c'hier or order, for collection, account of First National Bank of Florida.
Jacksonville, Fla.

JAMES M. SHOEMAKER, *Cashier.*

Received payment, Metropolitan National Bank.

Received of F. Vose, esq., one hundred ($100) dollars for fees in miscellaneous employments in and about his case in the circuit court of the United States for the northern district of Florida, against the Trustee, of the I. I. Fund of Fla. et al., said sum being in full for said employments to date.
May 28th, 1875.

J. J. FINLEY, *Att'y, &c.*

(On the margin:) Voucher D.

(Indorsed:) J. J. Finley. Vou. No. 21. Filed Jan. 2d, 1878. P. Walter, clerk, by Simon Baer, deputy cl'k.

NEW YORK, *Dec.* 21, 1875.

The National Bank of the Republic, of the city of New York, pay to the order of S. Y. Finley, fifty dollars.
$50.

F. VOSE.

(On the margin:) Voucher D, Broadway cor. Wall st.

Pay to G. I. Sany, esq., cashier or order, for collection account of First National Bank of Florida.
Jacksonville, Fla.

JAMES M. SHOEMAKER, *Cashier.*

Received payment.
Metropolitan National Bank.

S. Y. FINLEY.

Filed Jan'y 2d, 1878. P. Walter, clerk.

794 No. 1.] TALLAHASSEE, 27 *Nov.*, 1866.

F. VOSE, Esq., *New York:*

DEAR SIR: I have rec'd your favor of the 14th inst., enclosing check

for fifty dollars, for which please accept my thanks. I send you a copy of governor's messages & documents among which you will find report of salesman of Int. Imp's Board. There was more land sold than I supposed, but it is accounted for by the fact that payments were made in State scrip. The amount of the balance, as shewn by the treasurer's report, is one indebtedness from the State to the firm.

Yours, resp'y,

M. D. PAPY.

Voucher No. 1. 1866. Fl'a litigation. M. D. Papy. 27 Nov., $50.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

795 FRANCIS VOSE
vs.
TRUSTEES INT. IMP. FUND.

Received of Francis Vose the sum of thirteen hundred and thirty-six dollars and fifty cents for professional services in the above suit attending before master in taking testimony from Nov. 29, 1873.

Dec. 10, 1876.

J. B. C. DREW.

(Indorsed:) No. 22. J. B. C. Drew. $1,336.50. Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

796 DEAR MR. VOSE. Your check was rec'd. I express my thanks.

Yours, ever,

B. R. CURTIS.

NEWPORT, *Aug.* 29, '72.
FRANCIS VOSE, Esq.

(Indorsed:) No. 19. B. R. Curtis. $750. Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

No. 1.] PEMBERTON SQUARE, *Boston, Dec. 1st*, 1874.

Francis Vose to Estate of B. R. Curtis, Dr.

1872.

Nov. To numerous consultations and advice with reference to your cases before court of appeals in required to matters in Florida .....

Dec. To further repeated conferences & advice, acts, suits in court of appeals $500

Paid Jan'y 20, '76.

(Indorsed:) B. R. Curtis. Filed Jan. 2d, 1878. R. Walton, clerk.

797 JACKSONVILLE, *Dec.* 6, '76.

Received of Francis Vose fifty dollars, as retainer in matter of Yulee vs. Vose and Vose vs. Jackson et al., in U. S. court.

J. C. MARCY.

(Dec. 8. Paid $1.50, receipt one contract.)

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.

JACKSONVILLE, *Dec.* 8, '76.

Received of Francis Vose, esq., the sum of seventy-five dollars, in full of all matters up to date.

J. C. MARCY,
Of ANNO & MARCY.

(Indorsed:) Filed Jan. 2d, 1878. P. Walter clerk.

JACKSONVILLE, *Dec.* 16, '76.

Received of Francis Vose, esq., one hundred dollars, on account of professional services.

J. C. MARCY,
Solicitor, &c.

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.

JACKSONVILLE, *Jan.* 1, 1877.

Received of Francis Vose, esq., fifty dollars, in full for services as attorney up to Dec. 30th, 1876.
$50.00.

J. C. MARCY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

798 JACKSONVILLE, *Jan'y* 13, '77.

Received of Francis Vose, esq., fifty dollars, in full up to date for professional services.

J. C. MARCY.

(Indorsed:) No. 28. J. C. Marcy. Filed Jan. 2, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

JACKSONVILLE, *Dec.* 6, 1877.

Received of Francis Vose, esq., fifty dollars, in full up to date for professional services.

J. C. MARCY.

(Indorsed:) J. C. Marcy. Filed Jan. 2, 1878. P. Walter, clerk.

799 NEW YORK, *Nov.* 14, 1873.

Received of Francis Vose fifty dolllars on a/c, for services rendered in New York.
$50.00.

ISAAC T. HOAGUE.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

NEW YORK, *Dec.* 23, 1873.

Rec'd of F. Vose, esq., ten dollars on a/c.
$10.00.

I. T. HOAGUE.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

NEW YORK, *Jan.* 1, 1874.

Received of Francis Vose, esq., one hundred and fifty dollars ($150), in full for services on legal matters to date.

ISAAC T. HOAGUE.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

NEW YORK, *Jan'y* 31, 1874.

Francis Vose, esq., to I. T. Hoague, Dr.

Jan. 15.	To cash paid exp. to suit, N. Y., Jan. 2–15	$63 50
31.	" " " " " Washington & N. Y., Jan. 28–31.	39 05
31.	" professional services to date	205 00
15.	Cr. by cash expenses	30 00
		$175 00

Paid. I. T. HOAGUE.

Check, $100; bills, 75; 175.
(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

800 NEW YORK, *Mar.* 1, 1874.

Francis Vose Esq. to L. T. Hoague, Dr.

Mar. 1.	To professional services to date	$300 00
	" cash paid expenses in New York to Feb. 10, and on trip from N. Y. to Florida and back to March 4th	156 60
		456 60
	Credit, by cash, $100; cr., $15	115 00
		$341 60

Paid Mar. 7, '74.

I. T. HOAGUE.

Check I. T. H. $300. Fla. & back F. V. 100, 141.60.
Collection from Taylor 9,555.31, Feb. 10.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

NEW YORK, *April* 22, 1874.

The National Bank of the Republic of the city of New York pay to the order of I. T. Hoague, two hundred & fifty-four dollars $\frac{30}{100}$.
$254.30. F. VOSE.

(Indorsed:) I. T. Hoague, F. Vose. Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, deputy clerk.

801 Rec'd of F. Vose, esq., five hundred dollars on $\frac{3}{4}$ of retainer, &c., in case pending in Sup. Ct. U. S. between State of Florida and
New York, Oct. 21, 1875.

E. W. STOUGHTON.

(Indorsed:) No. 25. 1875. E. W. Stoughton. $500. Oct. 21. Filed Jan. 2d, 1878. P. Walter, clerk. By S. Baer, deputy clerk.

NEW YORK, May 13, 1876.

The National Bank of the Republic pay to the order of E. W. Stoughton, five hundred dollars.
$500. F. VOSE.

(Indorsed:) For deposite in Bank of New York for E. W. Stoughton. Filed Jan. 2, 1878. P. Walter, clerk.

802 Received of Francis Vose, esq., three coupons thirty-five dollars each (semi annual interest) Florida Railroad Company, bond No. 668, due Sept. 2, '68, March '69, & Sept. '69, on the first of those months. No payment for professional advice.

R. B. HILTON.

TALLAHASSEE, *Dec'r 4th*, '69.

(Indorsed:) 1869. Vouch 14. R. B. Hilton. Dec. 4. $105. Filed Jan'y 2d, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

TALLAHASSEE, *March 2d*, 1871.

F. VOSE, Esq.

DEAR SIR: Yours containing check for $100 was duly received—accept my thanks. Shall be pleased to hear from you at any time.

Very truly yours,

R. B. HILTON.

(Indorsed:) 1871. R. B. Hilton. $100. March 2d. Filed Jan'y 2d, 1878. P. Walter, clerk.

803 TALLAHASSEE, *March* 21, 1876.

Rec'd of F. Vose, esq., one hundred and twenty-five dollars, on account of professional services.

R. B. HILTON, *Att'y-Sol.*

(Indorsed:) Filed Jan'y 2d, 1878. P. Walter, clerk.

Received of F. Vose, esq., one hundred and twenty-five dollars, on a/c, for legal services.

$125. R. B. HILTON, *Att'y-Sol'r.*

FEB'Y, 1877.

(Indorsed:) Filed Jan'y 2d, 1878. P. Walter, clerk.

[Int. rev. stamp.]

No. NEW YORK, *Feb. 28th*, 1871.

The National Bank of the Republic, of the city of New York, pay to the order of R. B. Hilton, esq., one hundred dollars.

$100.00. F. VOSE.

(On the margin:) Broadway cor. Wall st.

(Indorsed:)

Pay B. C. Lewis & Son, or order.

R. B. HILTON.

Pay to order of Messrs. Nourse & Brooks.

B. C. LEWIS & SON.

For deposit in National Bank of the Republc.

NOURSE & BROOKS.

Filed Jan. 21, 1878. P. Walter, clerk, by S. Baer, deputy clerk.

[Int. rev. stamp.]

No. NEW YORK, *April 4th*, 1874.

The National Bank of the Republic, of the city of New York, pay to order of R. B. Hilton, fifty dollars dollars.

$50.00. F. VOSE.

(On the margin:) Broadway, cor. Wall st.

(Indorsed:

Pay to B. C. Lewis & Sons, or order.

R. B. HILTON.

Pay E. H. Perkins, jr., cash, or order.

B. C. LEWIS & SONS.

Received payment,

E. H. PERKINS, JR., *Cashier.*

Filed Jan'y 2, 1878. P. Walter, clerk.

804 (Under head of sundry items.)

Received from F. Vose, fifty dollars, on acc't of sinking-fund case, & paid for copying, &c.

JOS. FINEGAN.

JACKSONVILLE, *Sept.* 3, 1875.

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.

JACKSONVILLE, *May 4th*, 1876.

Received from Francis Vose, esq., two hundred & fifty dollars, on account.

JOSEPH FINEGAN.

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.

805 [Int. rev. stamp.].

№ 19,614.

[No.] NEW YORK, *Dec.* 26, 1876.

The National Bank of the Republic, of the city of New York, pay to order of J. Finegan, ninety dollars.

$90.00. F. VOSE.

(Stamped:) 53. Dec. 30, 1876. Second teller.

(On the margin:) Broadway cor. Wall st.

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.

JOSEPH FINEGAN.

Pay E. H. Perkins, jr., cashier, or order.

THOS. MAXEY, *Cashier.*

Received payment.

E. H. PERKINS, JR., *Cashier.*

$250.00. JACKSONVILLE, *Dec'b. 27th*, '76.

Received from Francis Vose, two hundred and fifty dollars, on account of agreement between us.

JOSEPH FINEGAN.

Also, paid 27th, ninety dollars.

(Indorsed:) No. 27. Joseph Finegan. Filed Jan'y 2nd, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

806 NEW YORK. *Aug.* 20, 1875.

The National Bank of the Republic of the city of New York, pay to the order of J. P. C. Emmons fifty dollars.

$50. F. VOSE.

(Indorsed:) Filed Jan'y 2, 1878. P. Walter, clerk.

J. P. C. Emmons pay G. I. Seny, esq., cashier, or order, for collection, account of First National Bank of Florida.

Jacksonville, Fla.

JAMES M. SHOEMAKER, *Cashier.*

NEW YORK, *Sept.* 29, 1875.

The National Bank of the Republic of the city of New York, pay to the order of J. P. C. Emmons, fifty dollars.

$50. F. VOSE.

(Indorsed:) Filed Jan'y 2d, 1878. P. Walker, clerk.

J. P. C. Emmons pay G. I. Seney, esq., cashier, or order, for collection, account of First National Bank of Florida.

Jacksonville, Fla.

JAMES M. SHOEMAKER, *Cashier.*

Received payment.

METROPOLITAN NATIONAL BANK.

JACKSONVILLE, *Dec.* 3, 1875.

National Bank of the Republic, New York City, pay to the order of J. P. C. Emmons, one hundred dollars, & charge to a/c of

Yours,

$100. F. VOSE.

(Indorsed:) Filed Jan'y 2d, 1878. P. Walter, clerk.

J. P. C. Emmons. P. G. I. Seny, esq., cashier, or order, for collection, account of First National Bank of Florida.

Jacksonville, Fla.

JAMES M. SHOEMAKER, *Cashier.*

Received payment.

METROPOLITAN NATIONAL BANK.

Rec., Jacksonville, Dec. 11, 1875, of Francis Vose, esq., one hundred dollars in full for services rendered prior to Dec. 4th, 1875.

J. P. C. EMMONS.

(Indorsed:) 1875. No. 24. J. P. C. Emmons. $100. Dec. 11. Filed Jan'y 2d, 1878. P. Walter, clerk, by S. Baer, deputy clerk.

807 Received of Francis Vose five $\frac{00}{100}$ dollars for telegrams sent and received from Joseph Finegan Oct. 12, 1869.

JAMES E. BROOME.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

NEW YORK, 26 *July*, 1869.

Received from Francis Vose the sum of twenty-five dollars, in full for services rendered in case of Thomas Fessenden & others, vs. Francis Vose to this date.

$25. J. E. & J. D. BROOME,
Defendants' Attorneys.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

808 *F. Vose to J. E. & J. D. Broome, Dr.*

To cash to protests by Judge Strong:

By	$ 50

F. Vose to J. E. & J. D. Browne, Dr.

Stage-fare for messenger to Wall st	20
Cash to M. C. Roberts	50
" " Moses Taylor, 28th & 29	1 00
Services, do. $1 E	2 00
To Taylor, 50c. & $1 for services	1 50
	$5 20
By cash	4 00
	$1 20
To cash to Roberts, Nov. 1	50
" " " Yulee	50
" " " Taylor	50
" serving 3 persons	3 00
" cash for Yulee, Roberts, & Taylor, 3d	1 50
" 3 services	3 00
	$10 20

Rec'd payment.
J. E. & J. D. BROOME.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

Received, New York, 14th May, 1869, of Francis Vose, sixteen dollars, in full for all copying of papers done by us for him to this date.

J. E. & J. D. BROOME,
Att'y at Law.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

809 25 CHAMBERS ST., N. Y., 27 *Mar.*, 1860.

FRANCIS VOSE, Esq.:

1868.		
May 8.	Preparing & serving answer and notice of trial in case Thomas Fessenden & others ag't F. Vose	25 00
1869.		
Feb'y.	Furnishing copies to Judge Strong at your request as follows: Copy complaint, 61 folios, @ 10c	6 10

Copy answer of Fla. R. R. Co., 2 fols		20	
" " " J. R. Roberts, 3 do		30	
" " " M. O. Roberts, 4 do		40	
" " " D. L. Yulee, 26 do		2 60	
" " " E. N. Dickerson, 36 do		3 60	
" Exhibit A & B, 13 do		1 30	
" " C, 9 do		90	
" " D, 5 do		50	
" " E, 3 do		30	
" " G, 15 do		1 50	
" " M, 5 do		50	
" guaranty of Dickerson, 4 do		40	
			$18 60
P'd May 14,	16		$43 60
" July 26,	25 in full.		

(Indorsed:) Francis Vose ⅌. $43.60. Voucher 5, Broome, 1867,-'8. Filed Jan. 2, 1878. P. Walter, clerk.

Rec'd July 2d, 1869, of Francis Vose, twenty-six folios of copying, two & $\frac{10}{100}$ dollars.

JOHN D. BROOME.

(Indorsed:) Filed Jan. 2, 1870. P. Walters, clerk.

810 FRANCIS VOSE *vs.* HARRISON REED ET AL. } In chancery.

Marshal's costs:

Nov. 8, 1871.	Service s'p'a to testify before examiner on S. B. Conover, R. H. Gamble, and H. A. Corley	1 50
	166 miles to Talla. to serve, @ 6c	9 96
March 26, '72.	Service spn. to testify before examiner on S. S. Adams	50
Apr'l 23, '72.	Service notice of application for attachment, &c., on H. Bisbee, jr., J. S. Adams, & J. B. C. Drew	6 00
		$17 96

Paid by pl'ff May 10, 1872.

S. CONANT,
U. S. Marshal.

(Indorsed:) 1872. Conant, $17.96, 10 May. F. Vose vs. H Reed et al. Marshal's costs. Rendered May 9, 1872. Filed Jan. 2, 1878. P. Walter, clerk.

811 U. S. circuit court 5th circ't north. dist. Florida, Jacksonville, Jan. 13, 1871.

FRANCIS VOSE *vs.* HARRISON REED ET AL. } In chancery.

Marshal's bill of costs;

To service notice of hearing for injunction on Harrison Reed, J. S. Adams, S. B. Conover, A. R. Meek, F. N. Webster, R. H. Gamble & Myron S. Mickles		14 00

To service injunction on Harrison Reed, R. H. Gamble, S. B. Conover, F. W. Webster, and Myron S. Mickles	10 00
166 miles to serve same, @ 6c	9 96
To service of spa. in chancery on Harrison Reed, A. R. Meek, J. S. Adams, S. B. Conover, R. H. Gamble, and F. W. Webster	12 00
166 miles to serve same, @ 6c	9 96
To service of spa. in chancery upon David S. Walsker and John Beard	4 00
To service same on Hubbard L. Hart and D. Morague, pres't Fla. Canal and Inland Transportation Co	4 00
70 miles to serve same, @ 6c	4 20
	$68 12

Sherman Conant, dep'ty marshal, being duly sworn, makes oath that the foregoing bill of costs is correct, and that the charges are legal, as he verily believes.

SHERMAN CONANT.

812 Sworn and subscribed to before me this the 13th Jan'y, 1871, and taxed as above charged.

J. E. TOWNSEND, *Clk.*

Recei'd payment,

S. CONANT,
Per H. BISBEE, JR.

(Indorsed:) U. S. cir. c't 5th circuit, northern dis't, Fla. Voucher. 1871. Francis Vose vs. Harrison Reed et al. Marshal's bill of costs. Filed Jan'y 4, 1871. J. E. Townsend, cl'k. Filed Jan. 2, 1878. P. Walter, cl'k.

813 FRANCIS VOSE
vs.
O. B. HART ET AL. TRUSTEES, &C.

Marshal's bill costs:

Service writ of spa. O. B. Hart, gov	2 00
O. B. Hart, pres't, &c	2 00
D. Eagan	2 00
C. A. Cowgill	2 00
W. A. Cocke	2 00
C. H. Foster	2 00
Mileage 166 miles to serve (Foster) 6c	9 96
do (Eagan) 6c	9 96
	31 92

Paid.

S. CONANT,
U. S. Marshal.

JACKSONVILLE, *April* 4, '73.

(Indorsed:) Vou. 17. 1873. S. Conant, 31.92, March 4. Filed Jan. 2d, 1878. P. Walter, clerk; by S. Baer, dep'ty cl'k.

814 U. S. circ't court.

FRANCIS VOSE
vs.
TRUSTEES INTERNAL-IMPROVEMENT FUND.

Rec'd of Francis Vose, esq., two hundred dollars on a/c of employment in relation to the business of said suit during the interval between the session of the court in February, & the session April, present month.

W. G. M. DAVIS.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

FRANCIS VOSE
vs.
TRUSTEES INTERNAL-IMPROVEMENT FUND.

JACKSONVILLE, *Feb'y* 9, 1876.

Received of F. Vose, esq., six hundred and fifty dollars, in full of all demands to date for legal services in the above suit, making, with previous payments, nine hundred and fifty dollars.

Since Dec. 18, '75.

W. G. M. DAVIS.

(Indorsed:) Filed Jan. 2d, 1878. P. Walter, clerk.

JACKSONVILLE, *Jan'y* 12, 1876.

Received of F. Vose, esq., sixty-five dollars on account legal services.

W. G. M. DAVIS.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

815 JACKSONVILLE, *Jan.* 4, '75.

Received from F. Vose, for account of Gen. W. G. M. Davis, thirty-five dollars.

J. C. THROSHER.

(Across the face:) This is a good voucher as against by F. Vose on acc't to me.

W. G. M. DAVIS.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLE, FLA., *July* 3, 1875.

At five days' sight pay to the order of W. G. M. Davis, or order, one hundred dollars, value received, and charge the same to account of , for professional services.

$100.00. JOSEPH FINNEGAN.

To FRANCIS VOSE,
Fifth Avenue Hotel, New York.

JULY 16.

(Stamped:) P'd July 24. F. V'e.

(Across the face:) Protested for non-acceeptance July 8, 1875. Fees $1.25. No. 245, pro't. July 8, 1875. Jos. Varnum, not. pub.

(On the margin:) No. 6876. Pro't July 16, 1875. Not. Pub.

(Indorsed:) W. G. M. Davis.
Pay G. Levy.
Filed Jan'y 2, 1878. P. Walter, clerk.
Metropolitan B., 2.

JACKSONVILLE, FLA., *July* 21, 1875.

At sight pay to the order of J. E. Gamdry, esq., cash, one hundred two $\frac{58}{100}$ dollars, value received.
$102.58.

JAMES M. SHOEMAKER,
Cashier.

To Gen. JOSEPH FINEGAN,
Savannah, Ga.

(Indorsed:)
Rec. Pay't.

J. E. GAMDRY, *Cr.*

Filed Jan. 2d, 1878. P. Walter, clerk.

816 JACKSONVILLE, *May* 8, 1876.

Received of Francis Vose, esq., one hundred dollars, on a/c of legal services.

W. G. M. DAVIS.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLE, *May* 10, 1876.

Received of Francis Vose the sum of four hundred dollars, in full for professional services rendered to him under special employment in respect to the matters in which said Vose is interested under the decrees made in the case of said Vose versus The Trustees of the Internal-Improvement Fund & others, in the United States circuit court for the northern district of Florida.

W. G. M. DAVIS.

(Indorsed:) Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

JACKSONVILLE, *April* 28, 1876.

Received of Francis Vose, esq., one hundred dollars on acc't of professional services.

W. G. M. DAVIS.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

817 JACKSONVILLE, *April 11th*, 1876.

Francis Vose, to W. G. M. Davis, esq., attorney at law.

To professional services as per agreement by letter, at $200.00 per month:

1876.		
M'ch 9.	1 month services	200 00
April 4.	25 days, @ $6\frac{2}{3}$ per day	166 50
		$366 50

CR.

April 4. By cash $200 00

To balance due $166 50

Rec'd payment,

W. G. M. DAVIS,
Per C. M. DAVIS

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLE, *April 5th*, 1876.

FRANCIS VOSE, Esq.:

DEAR SIR: Please send me by my son check for two hundred dollars. I have some bills to pay. Put the amount in two checks, as I want to send one hundred dollars North.

Yours, truly,

W. G. M. DAVIS.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

818 Francis Vose to Philip Walter, clerk, Dr.

DAVID L. YULEE
vs.
F. VOSE.

Copy of answer certified 13 75

FRANCIS VOSE ET AL.
vs.
THE TRUSTEES ET AL.

Certified copy of order of ref'r., &c. 2 25

$16 00

Rec'd payment.

PHILIP WALTER.

Jan. 6, 1877.

(Indorsed:) Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, dept'y clerk.

Francis Vose to Philip Walter, clerk, Dr.

IN THE MATTER OF FRANCIS VOSE
vs.
THE TRUSTEES ET AL.

Clerk's costs:

To entering order for distribution of funds hands of rec.... 50
To filing same, .10; serving copy of same on receiver, 1.00.... 1 10

1 60

FRANCIS VOSE
vs.
DAVID L. YULEE.

Copy of bill of David L. Yulee, 14.00 ..... 14 00
Copy of plea, 1.00; filing 3 process, .30 ..... 1 30

15 30

16 90

PHILIP WALTER, *Clerk.*

Rec'd payment.
May 15th, 1876.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

819 Francis Vose to Philip Walter, clerk, Dr.

To copying report of master for Nov., 1874, & decree & opinion of the court in the matter of Francis Vose et al. vs. Florida R. R.. 5 00

Rec'd payment.

PHILIP WALTER, *Clerk.*

JACKSONVILLE, FLA., *Dec.* 24, '74.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

Francis Vose to Philip Walter, clerk, Dr.

To copies made as per contract appeal case or Florida R. R. for sinking fund 40 00
" copy of Doggett (master) report 1 00

$41 00

Rec'd payment.

PHILIP WALTER.

DEC. 4th, 1875.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

820 Supreme court.

FRANCIS VOSE
vs.
THE FLA. RAILROAD COMPANY.

In this case the bonds involved were sold by the sheriff, January 22, 1867. On completion of the sale, February 1, 1867, the auctioneer's and sheriff's fees, amounting to $109, were paid to the sheriff in Mr. Vose's check for the amount.

EVARTS, SOUTHMAYD & CHOATE.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

821 Francis Vose, esq., to Evarts, Southmayd & Choate, Dr.

1866.
Dec. 27. To taxed costs & disb'ts in suit upon I. I. bonds $331 06
" " " counsel fee in do., & advice in do. various times 500

1867.				
Jan'y	31.	" " fee in relation to Fla. bonds	50	
Apr'l	16.	" exemplification of judgment	10	50
"	"	" " " "	3	
Oct.	1.	" att'y fees as to I. I. bonds	200	
1868.				
March	26.	" " drawing notice to trustees, do	10	
Sept.	9.	" preparing papers, proceedings in Fla	50	
"	"	" register's fees & clerk's certificate	7	
"	30.	" U. S. com'r taking deposition	20	29
1870.				
Nov.	8.	" ex'g papers & advice in suits in Fla	35	
Apr'l	5.	" tel'g's to Fla	3	58
"	"	" exemplification of judg't	12	
June	12.	" examining papers & mems. for counsel	50	
Oct.	15.	" do. & advice	25	
Nov.	2.	" opinion on questions on I. I. Fund act	50	
1873.				
Ap'l	21.	" exam. papers & advice as to suit as trustees	25	
June	12.	" do. do.	25	
"	12.	" counsel fee prep'g & try. case in supreme court	250	
Sept.	13.	" do. ex'g case on appeal	25	
Dec.	30.	" counsel fees & services collecting money from receiver	350	
1875.				
Oct.	21.	" " " arguing case in general term	250	
			$2,282	43

Received payment.

EVARTS, SOUTHMAYD & CHOATE.

(Indorsed:) Voucher 3. Evarts, Southmayd & Choate. $2,282.43.
Filed Jan. 3, 1878. P. Walter, clerk.

822 F. Vose to Hugh A. Corley, Dr.

1875.				
May	1.	1 month's salary	100	00
	1	" board	35	00
			$135	00

Rec'd payment,

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2d, 1878. P. Walter, clerk.

Francis Vose to Hugh A. Corley, Dr.

1875.				
March	11 to 14.	Hotel in Jacksonville	$10	50
"	31.	" " "	3	00
		R. R. to Tallahassee	8	25
		½ month's service to April 1	50	00
			$71	75

Rec'd payment,

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

823 NEW YORK, *Sept.* 11, 1875.

Received from Francis Vose one hundred dollars, in full for salary for the month of July, 1875.

$100. HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. Philip Walter, clerk.

N. Y., *Aug.* 14, '75.

Rec'd from F. Vose, on a/c, thirty dollars ($30).

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

FIFTH AVENUE HOTEL,
DARLING, GRISWOLD, & CO.,
New York, July 27, 1875.

Rec'd from Francis Vose, esq., twenty-five dollars ($25), on account of salary for the present month.

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

824 Francis Vose to Hugh A. Corley, Dr.

1875.

June	3.	Board bill at hotel, Jacksonville	18 25
"	23.	" "	3 00
"	"	R. R. to Tallahassee	8 25
"	"	Lodging and breakfast	1 25
"	30.	1 week's board, Tallahassee	8 00
"		10 days' salary during this month	33 33
			$72 08

Rec'd payment,

HUGH A. CORLEY.

Also received ten dollars in advance on July account.

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

Francis Vose to Hugh A. Corley, Dr.

1875.

May	9.	Telegram to Jacksonville	90
"	11.	Board from May 1 to date	13 00
"	"	Trav. exp. to Jacksonville { R. R., 8.25; hack, .75; supper, .50 }	9 50
"	22.	Railroad from " to Fernandina	3 00
"	24.	Hotel at Fernandina	1 50
"	"	Railroad to Jacksonville	3 00
"	"	Breakfast at Baldwin	75
"	25.	" " No. 4, J., P. & M. R. R.	50
"	26.	Trav. exp. from Tallahassee to Jacksonville { 8.25; .50 }	8 75
			$40 90
		Salary for May	100 00
			$140 90

Rec'd payment,

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

825 JACKSONVILLE, *April* 9, '74.

Pay to the order of H. Bisbee, jr., one hundred dollars.

$100. F. VOSE.

To NATIONAL BANK OF THE REPUBLIC, NEW YORK.

(Stamped:) Third teller, 53. Apr. 14, '74.

(Indorsed:)

Received payment,

E. H. PERKINS, JR., *Cashier.*
H. BISBEE, JR.
E. H. PERKINS, JR., *Cashier.*

Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, dep'ty clerk.

Francis Vose, esq., to H. Bisbee, jr., Dr.

1872.

April 29. To professional services rendered in the case of Francis Vose vs. The Florida Railroad Company, on judgment, commencing suit, drawing demurrer, & pleas, arguing same, drawing replications, and three days' attendance in court, on the costs, att'y's fees..... $75

Received payment.

Paid July 25, '72.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

Received of F. Vose one hundred dollars this March 8, 1872.

H. BISBEE, JR.

(On the margin:) Voucher No. 8, F.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

826 NEW YORK, *July* 3, 1871.

Pay to the order of Messrs. Bisbee & Archibald sixty dollars.

$60. F. VOSE.

To NATIONAL BANK OF THE REPUBLIC.

(Indorsed:)

Pay to the order of Bently, Miller & Co.

BISBEE & ARCHIBALD.
BENTLEY, MILLER & CO.

Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLE, *May* 30, '71.

Pay to the order of Col. H. Bisbee, jr., one hundred and twenty dollars.

$120. F. VOSE.

To NATIONAL BANK OF THE REPUBLIC, NEW YORK.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

H. Bisbee, jr.

Pay to P. Ware, jr., & Co., or order.

CROWELL & ROSS.

F. Vose, &c.

Pay the Central National Bank of the City of New York for collection for the account of Eliot National Bank, Boston.

R. R. CONANT, *Cash.*

SAVANNAH, *May 9th*, 1871.

The National Bank of Republic, New York, pay to H. Bisbee or order one hundred dollars.

$100.00. F. VOSE.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

H. Bisbee pay to order Acker, Merritt & Condit.

W. H. WILTBERGER, *For Deposit.*
ACKER, MERRITT, CONDIT.

JACKSONVILLE, *Dec.* 7, 1870.

Pay to the order of Col. H. Bisbee, jr., one hundred dollars.

$100. F. VOSE.

To the NATIONAL BANK OF THE REPUBLIC, NEW YORK.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

H. Bisbee, jr.
Pay Howes & Macy or order.

SAM'L I. BRIDGE, *Cashier.*
HOWES & MACY,
By T. T. HOWES, *Att'y.*

827 JACKSONVILLE, *Nov.* 3, 1870.

Pay to the order of Bisbee & Archibald one hundred dollars.

$100. F. VOSE.

To NATIONAL BANK OF THE REPUBLIC, NEW YORK.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

Bisbee & Archibald.
Pay Howes & Macy or order.

SAM'L I. BRIDGE, *Cashier.*
HOWES & MACY.

BOSTON, *Sept.* 26, '70.

Pay to the order of Col. H. Bisbee, jr., one hundred dollars.

$100. F. VOSE.

To NATIONAL BANK OF THE REPUBLIC, NEW YORK.

(Across the face:) Good. Whit'g.

(Indorsed:) H. Bisbee, jr., The. T. Edgerton.

Filed Jan. 2d, 1878. P. Walter, clerk.

NEW YORK, *Aug. 30th*, 1870.

The National Bank of the Republic pay to Col. H. Bisbee, jr., or order, one hundred dollars.

$100. F. VOSE.

(Indorsed:)

H. Bisbee, jr.
Pay Wm. Bassett, jr., esq. cash., or order.

WILLIAM LIBBY.
H. BASSETT, JR., Esq.

Filed Jan. 2, 1878. P. Walter, clerk.

NEW YORK, *July* 16, 1870.

The National Bank of the Republic pay to Col. H. Bisbee, jr., or order, one hundred dollars.

$100. F. VOSE.

(Indorsed:)

H. Bisbee, jr., p'r R. B. Archibald.

Pay to the order of Howes & Macy.

D. G. AMBLER.

Filed Jan. 2, 1878. P. Walter, clerk.

HOWES & MACY,
By T. T. HOWES, *Att'y.*

828 F. Vose to A. Doggett, Dr.

Traveling expenses to Tallahassee & back to Jacksonville	$18 50
Five days at $5	25 00
Copy of orders appointing master	2 80
" " testimony	3 00
	$49 30
By cash	10 75
Bal. due	$38 55

Rec'd payment,

A. DOGGETT.

TALLAHASSEE, *March* 1, '72.

(Indorsed:) 1872. A. Doggett. $49.30. M'ch 1.

Filed Jan. 2, 1878. P. Walter, clerk.

829 VOUCHER 16.

F. Vose to A. Doggett, Dr.

To traveling expenses from Jacksonville to Tallahassee & back to Jacksonville, & for services	$40 00

Rec'd payment,

A. DOGGETT,
Master pro hac vice.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

Francis Vose to A. Doggett, examiner, Dr.

VOSE
vs.
REED ET AL.

To taking testimony in said suit, nine days, @ $5	$45 00
" passage up to Tallahassee & back to Jacksonville	16 50
" meals & hack-hire	1 75
" taking testimony, 5,632 words	8 69
" copies of testimony	8 69
" administering 3 oaths	30
	$80 93
By cash	20 00
To balance	$60 93

Received payment in full up to this date, December 5th, 1871.

A. DOGGETT.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

830 Francis Vose to A. Doggett, Dr.

To copies of May, June, July, August, Sep'r, Oct'r, November, & December reports, 1876 ..... $29 12
Jan. 4, 1877, to copy of tabular statement of coupons 5 00

$34 12

Rec'd pay't.

A. DOGGETT.

JAN. 24, 1877.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

Francis Vose to A. Doggett, master, Dr.

To copies of various papers made in the suit of F. Vose vs. Trustees of the Internal-Improvement Fund et al $15 00

Rec'd pay't.

A. DOGGETT, *Master*.

October 17th, 1873.

(Indorsed:) 1873. A. Doggett. 2 vouchers. $6.50, July 3; $15.00, Oct. 17.

Filed Jan. 2, 1878. Philip Walter, clerk.

JACKSONVILLE, *July* 3, 1873.

Francis Vose to A. Doggett, Dr.

To cash paid for telegram $3 50
" " " " copies of reports 3 00

$6 50

Rec'd payment,

A. DOGGETT.

JULY 3, 1873.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

831 Francis Vose to A. Doggett, Dr.

1875.

June 16.	To copies of	May reports & postage	.....	$3 09
July 7.	" "	Dec'r, 1874, Jan., Feb'y, March, April, May, & June, of 1875	.....	5 00
Aug. 6.	" "	July reports & postage	.....	2 56
" 20.	" "	abstract of sales for March	.....	75
Sept'r 3.	" "	August reports	.....	2 50
Oct. 5.	" "	Sept'r "	.....	3 00
Nov. 3.	" "	October "	.....	2 00
Dec. 6.	" "	November "	.....	2 50
1876.				
Feb. 2.	" "	January "	.....	4 00
March 9.	" "	February "	.....	3 00
April 7.	" "	March "	.....	4 00
" 25.	" "	of statement of principal & interest of coupons presented for registry	.....	6 00

$38 40

Rec'd payment,

A. DOGGETT.

APRIL 26, 1876.

(Indorsed:) 1876. A. Doggett. $38.40. Francis Vose. a/c 38.09. April 26. Filed Jan. 2, 1878. P. Walter, clerk, by S. Baer, deputy clerk.

Francis Vose to A. Doggett, Dr.

To copy of Judge Baker's testimony	$1 00
" " " treasurer's a/c for Jan'y, 1875	50
" " " April a/c as receiver	2 00
	$3 50

Rec'd payment,

A. DOGGETT.

MAY 11, 1875.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

832 Francis Vose to A. Doggett, Dr.

1873.			
Nov'r 7.	To copies of report & abstract of sales for Oct'r		$2 00
Dec'r 17.	" " " " " " " Nov'r		2 00
1874.			
Jan'y 27.	" " " " " " " Dec'r		1 50
Feb'y 3.	" " " " " " " Jan'y		3 00
	" postage		12
March 6.	" copies of report " " " " Feb'y		3 00
	" postage		15
" "	" cash paid expressage on coupons from N. Y		1 75
April 28.	" copies of March report & abstract of sales		2 00
June 8.	" " " April " " " "		3 00
	" postage		12
June 20.	" cash paid Hemming for making copies of May report & abstract		3 00
June 21.	" copies of June report & abstract; postage		12
July 4.	" " " " " "		3 00
" "	" postage		12
Aug. 3.	" " " July " "		3 00
	"		09
" 4.	" " opinion of master in regard to validity of coupons		5 00
	" " postage		09
Aug. 7.	" copy of report of master		12 00
	postage		24
Oct. 7.	" " " " " Sept'r		2 00
	postage		0
			$47 39
833 Nov'r 20.	To copy of October report		2 50
	" postage		12
Dec'r 10.	" " " November "		2 50
Jan'y 13.	" " " Dec'r "		2 50
			$55 01

Paid March 25.

(Indorsed:) 1875. A. Doggett. $55.01. 25 March.

Filed Jan. 2, 1878. P. Walter, clerk.

834

JACKSONVILLE, FLA., *Jan'y* 13, 1876.

Rec'd from F. Vose one hundred dollars on account.

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLE, FLORIDA, *January* 1, 1876.

Received from Francis Vose fifty dollars ($50) on account.

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLÆ, FLA., *Dec.* 14, '75.

Received from Francis Vose fifty dollars ($50.00) on account.

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

JACKSONVILLE, *Dec.* 2, '75.

Rec'd from F. Vose, esq., one hundred dollars on a/c.

HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

835

Francis Vose to Hugh A. Corley, Dr.

1875.				
Nov.	30.	To balance as per acc't furnished		298 49
Dec.	1.	Envelopes	30	
"	2.	Board	3 00	
"	2, 3, 4.	To trav. exp. to Tallahassee & back	13 65	
"	11.	" postage-stamps	1 00	
"	15, 16, 17.	" trav. exp. to Tallahassee & back	13 10	
"	19.	" stationery	80	
"	31.	" board to date	17 68	
"	"	" salary for December	100 00	
				149 53
				$448 02

CR.

1875.				
Dec.	2.	By check	$100	
"	15.	" "	50	
1876.				
Jan'y	1.	" "	50	
				$200 00
		Balance due		$248 02

JAN'Y 13. P'd on a/c, 100.

Rec'd pay't in full of balance ($148.02) Jan'y 17, 1877.

HUGH A. CORLEY.

(Indorsed:) You. No. 18. H. A. Corley.

Filed Jan. 2d, 1878. P. Walter, clerk, by S. Baer, deputy clerk.

TALLAHASSEE, FLORIDA, *November* 13, 1875.

Rec'd from F. Vose, esq., seventy-five dollars on a/c.
$75.00. HUGH A. CORLEY.

(Indorsed:) Filed Jan. 2, 1878. P. Walter, clerk.

836 FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund.

In accordance with the ruling of the court, this day made upon the issue joined on the report of the special master A. R. Meek, esq., to whom, under the judgment of this court rendered on December 29th, A. D. 1876, the petition of the plaintiff in the above-entitled cause for allowance for costs and expenditures was referred, it is ordered that A. Doggett, esq., receiver, do pay to the said Francis Vose, through his solicitors of record, Jackson, Lawton, and Bassenger, the sum of twenty-seven thousand eight hundred and twenty-five $\frac{34}{100}$ ($27,825.34), principal, and five thousand eight hundred and sixty-two $\frac{46}{100}$ ($5,862.46) dollars, interest, from any funds produced under the decrees of this court, in the said cause, which may now be in his hands.

It is further ordered that the said receiver pay the sum of one
837 hundred and fifty dollars costs of A. R. Meek, esq., special master.

THOMAS SETTLE, *Judge.*

FEBRUARY 15th, 1878.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

This case coming on to be heard on the petition of the plaintiff to be allowed for costs and expenditures paid and incurred in the above-entitled cause, as shown by a bill of particulars submitted to A. R. Meek, special master, to whom said cause was referred, on the report of the said master, with evidence, etc., and upon exceptions filed to said report by the parties at variance, after hearing arguments of counsel on both sides, and consideration by the court, it is ordered, adjudged, and decreed that the report of the said master be affirmed so far as regards the following items allowed to the said petitioner:

Item No. 1, To M. B. Papy		$50 00
" " 12, " H. Bisbee, jr.,		1,816 00
" " 17, " Jackson, Lawton & Bassenger		22,678 28
838 Item No. 18 To T. W. Brevard,		$600 00
" " 23 " S. Conant, U. S. marshal		327 96
" " 25 " J. Towsend, clerk		305 85
" " 28 " J. J. Finley		554 50
" " 29 " S. Y. Finley		50 00
" " 30 " J. B. C. Drew		1,331 50
" " 38 " Philip Walter, clerk		115 60
Making an aggregate of		$27,835 34

and that the same be paid by the receiver in this cause, A. Doggett, with interest upon the same, to be estimated by the clerk of this court, subject to examination and exception of counsel.

Second. It is further ordered, adjudged, and decreed that the following items be disallowed:

Item No.	8. W. P. Dockray	75 00
" "	9. J. S. Adams	100 00
" "	13. McGruder, marshal	91 00
" "	14. M. J. Kelly	76 50
" "	21. J. D. Pope	350 00
" "	26. R. B. Curtis	1,150 00
" "	31. J. T. Hoague	1,250 03
" "	32. W. R. Anno	50 00
" "	33. J. P. C. Emmons	300 00
" "	35. W. G. M. Davis	2,066 50
" "	36. Joseph Finnegan	640 00
839 Item No.	37. J. C. Marcy	525 00
" "	40. F. Vose	1,937 32
Making an aggregate of		$

But the disallowance of the item No. is made without prejudice to the right of the said petitioner to submit these claims again for consideration at the close of the litigation in which they have been incurred.

Third. It is further ordered, adjudged, and decreed that all other items in said account or bill of particulars allowed by the master be referred back to a master that further testimony may be taken in regard to the same under the original order of reference which is to that end continued in full force.

Fourth. It is ordered that the fee of the said master, A. R. Meek ($150.00), be paid by the receiver.

It having been agreed among the counsel of the parties at variance, that J. H. Durkee, esq., should be appointed master pro hac vice under this submission it is so ordered accordingly.

THOMAS SETTLE, *Judge.*

FEBRUARY 15*th*, 1878.

840 In the circuit court of the U. S., 5th circuit, northern dist. Florida. In equity.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida et al.

To the honorable the judges of the said circuit court of the United States:

The petition of George F. Drew, governor of the State of Florida; Columbus Drew, comptroller; Walter Gwynn, treasurer; Hugh A. Corley, commissioner of lands and immigration; and George P. Raney, attorney-general of said State, who are trustees of the Internal-Improvement Fund of Florida and defendants in said cause, respectfully showeth unto your honors—

That your petitioners find themselves much aggrieved by a decretal order made in this cause on the 29th day of December, A. D. 1876, by the Hon. James W. Locke, the judge then presiding, by which order

it was, among other things, ordered that the petition of the ...ng to pay
ant, Francis Vose, praying for an allowance of monies ou...hall be
841 funds in the hands of the receiver in this cause, for certa... ever
penditures of money made solely by him in the payment of s...
itors, and certain money expenses, costs, and fees, the said expenditure having been incurred and paid by him in ascertaining and bringing into the fund which has been by a decree of this court subjected to pay a certain class of indebtedness in part held by complainant, and in part held by a large number of other parties, who have been and still continue to receive the benefits resulting from said decree, be referred to A. R. Meek, esq., an attorney of this court, as special master to enquire and report, 1st, what and by whom the necessary expenditures have been incurred in bringing the moneys there already received in this case into court; and, 2nd, to enquire and report what necessary expenditures have been made, and by whom, in protecting the landed and sinking fund from which this money has been and will be realized; and, 3d, to enquire and report what personal services have been rendered, and by whom rendered, in the above work, and the value of said services; and, 4th, to enquire and report what amount of the foregoing expenditures has been charged to the said Francis Vose
842 by the receiver in this case, instead of being paid out of the common fund in his hands.

Your petitioners represent that they have been further aggrieved by two decretal orders made in the above-entitled suit by the Hon. Thomas Settle, judge presiding in the honorable court, on the fifteenth day of February, A. D. eighteen hundred and seventy-eight. That by one of said orders it, among other things, is ordered that the report of the special master, A. R. Meek, to whom was referred the petition of the complainant, Francis Vose, in this cause, for allowance for costs and expenditures, etc., aforesaid, under said order of December 29th, 1876, be approved as to the following items, to wit:

Item	No. 1.	M. D. Papy	$50 00
"	" 12.	H. Bisbee, jr	1,816 65
"	" 17.	Jackson, Lawton & Bassinger	22,678 28
"	" 18.	T. W. Brevard	600 00
"	" 28.	J. J. Finley	5[illegible]4 50
"	" 29.	S. Y. Finley	50 00
"	" 30.	J. B. C. Drew	$1,331 50

And your petitioners further show that the other of said orders, among other things, directs that the receiver in this cause, to wit, A. Doggett, should pay to said Francis Vose, through his solicitors,
843 Jackson, Lawton & Bassinger, the sum of twenty-seven thousand eight hundred and twenty-five dollars and thirty-four cents, principal, and fifty-eight hundred and sixty-two dollars and forty-six cents interest, from any funds produced under the decrees of this court and in his hands.

Now, your petitioners represent that said first-named order, in so far as the same provides for an enquiry and report as to the allowance of any costs, except costs as between party and party, or the allowance of any money on account of necessary expenditures incurred in bringing the moneys already received in this case into court, except those which are properly chargeable as costs between party and party; and in so far as the same provides for an enquiry and report as to what necessary expenditures have been made and by whom in protecting

the landed and sinking fund from which this money has been and will be received, and in so far as the same provides for an enquiry, and report as to what personal services have been rendered in the above work and the value of such services, and in so far as the same provides for an enquiry and report as to what amount of the foregoing expenditures has been charged to said Francis Vose by
844 the receiver instead of being paid out of the common fund in his hands, and in so far as the same provides for the allowances of, or an enquiry and report as to any costs, as costs between solicitor and client, or for any expenditures, except as costs taxable by or under the statutes of the United States, is erroneous, and petitioners are aggrieved thereby, because your petitioners show that the Internal Improvement Fund which is pledged to pay the indebtedness involved in this cause, is sufficient to pay all such indebtedness and statutory costs aforesaid against the same.

And these petitioners represent that as the fund, consisting as it does of about ten millions of acres of land as represented, by the said master's report, and the amount of money collected from sales and other sources, as shown by the master, is sufficient to pay all the indebtedness outstanding against it, and the costs of this suit taxable as between party and party, that no costs taxable between solicitor and client should be allowed in this cause to complainant; that as the estate is solvent the taxation and allowance to complainant of costs, as between solicitor and client, as proposed by said order, would im-
845 pose the burden of such costs upon said fund, whereas in law the creditors of such fund are only entitled to their debt and interest and costs as between party and party out of the same, and any allowance out of said fund of such costs, as between solicitor and client, would not be a contribution between creditors, but only are additional and illegal burden upon said fund.

And your petitioners represent that so much of said second-named order or decree as confirms said special master' (Meek) report as to said items aforesaid is erroneous, and that so much of said order thirdly named as directs the payment of so much of said sum of $27,825.34 principal and $5,862.46 interest, as is constituted or made of said items aforesaid, and interest thereon, being included in and constituting a part of said sum, is also erroneous.

And your petitioners further represent that so much and such parts aforesaid of said orders or decrees of February 15th, 1878, are erroneous, and your petitioners are aggrieved thereby, because your petitioners show unto your honors that there is no testimony in said master's report, or accompanying the same, showing or proving that the
846 amount of said items aforesaid as to which said master's report was approved, or any of them, were reasonable or proper amounts to be paid, or that services for which they were paid were worth the amounts so paid for the same, or any of them, or showing the value of such services, and it is shown by the said report, or the testimony accompanying it, that the amount paid M. D. Papy was paid long anterior to the commencement of said suit, and because said several items were not properly allowable under said order of December 29th, 1876, aforesaid, and because said items so allowed are fees allowed to solicitors and counsellors of complainant, and are taxable only as costs taxable as between solicitor and client, and should not be allowed, and are not allowable under the statutes of the United States aforesaid.

Whereupon your petitioners humbly pray that your honors will be pleased to vouchsafe a rehearing of this cause as to said decretal

orders aforesaid, before your honors, your petitioners submitting to pay such costs as the court shall award in case their complaint shall be found groundless, and your petitioners as in duty bound will ever pray.

847 JAMES M. BAKER,
GEO. P. RANEY,
Sol. for Petitioners.

We hereby certify that we have perused the foregoing petition and are of the opinion that a rehearing ought to be granted as thereby prayed for.

GEO. P. RANEY.

NORTHERN DIST. FLORIDA:

Personally appeared Geo. P. Raney, one of the petitioners, and he being duly sworn, says the above petition is true in substance and in fact.

GEO. P. RANEY.

Sworn to and subscribed before me this 25' day of May, 1878.
P. WALTER, *Clerk.*

848 (Indorsed:) Francis Vose vs. The Trustees of the Internal-Improvement Fund. Petition for rehearing. Filed by consent of the court this 11th day of June, 1878. Philip Walter, clerk.

849 The President of the United States of America to Sewall Sergant, of the city and State of New York, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine, upon their respective corporal oaths before you to be taken, J. P. Geraud Foster, James Thomson, Louis H. Myer, Morris K. Jessup, John S. Kennedy, Strachan, Nathaniel A. Cowdrey, as witnesses on the part of the complainant in a certain cause now pending undetermined in the circuit court of the United States for the northern district of Florida, wherein Francis Vose et al. are complainants and George F. Drew, governor, et al., Trustees of the Internal-Improvement Fund of Florida et al. are defendants, but more particularly in the matter of a certain peti-
850 tion filed in said cause by the said complainant, Francis Vose, for the payment to him out of the fund in the hands of the receiver therein, certain disbursements, costs, expenses, and services rendered by him solely in the bringing of said fund into court, etc., etc.

And we do further empower you to examine on the same behalf and in like manner any other person or persons who may be produced as witnesses before you. And we do hereby require you, before whom such testimony may be taken, to reduce the same to writing and to close it up under your hand and seal, directed to Philip Walter, clerk of said circuit court, at Jacksonville, Florida, and that you return the same, when executed as above directed, annexed to this writ, with the title of the cause endorsed on the envelope of the commission,
851 into the said circuit court, before the judge thereof, with all convenient speed.

Witness the honorable Morrison R. Waite, Chief Justice of the United States Supreme Court, at Jacksonville, in the said district,

this nineteenth day of September, in the year of our Lord one thousand eight hundred and seventy-eight.

PHILIP WALTER, *Clerk.*

JAMES B. C. DREW,
Attorney and Solicitor for F. Vose, Complainant.

(Indorsed:) United States circuit court, northern district of Florida. Francis Vose vs. Trustees Int.-Imp. Fund of Florida et al. In re. petition of compl't for payment of costs. Commissioner to oaths. Testimony. Rec'd Oct. 8, 1878. J. B. C. Drew, sol. for compl'ts.

852 Circuit court United States, northern dist. of Florida.

FRANCIS VOSE
vs.
TRUSTEES INT. IMP. FUND.

STATE OF NEW YORK,
County of New York:

JAMES B. C. DREW, being duly sworn, says he is one of the solicitors for the complainant, and says that he deposited a copy of the notice attached hereto, adressed to Hon. George P. Raney, att'y-general, Tallahassee, Florida, post-paid, on the 29th day of September, 1878, in the general post-office in the city of New York.

J. B. C. DREW.

Sworn and subscribed to before me this 8th day of October, 1878.
SEWALL SERGEANT,
U. S. Commissioner.

853 In the circuit court of the United States, northern district of Florida.

FRANCIS VOSE, COMPLAINANT,
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida, and other defendants. } In equity.

In re the petition of the complainant for payment of certain costs and expenses, etc., etc.

GENTLEMEN: Please to take notice that the complainant will proceed in the taking of testimony on his behalf in the matter of the above-named petitioner before Sewell Sergeant, esq'r., commissioner, at room No. 1, on 3rd floor, in No. 61 Wall street, in the city of New York, in the State of New York, on the twenty-first day of October, A. D. 1878,
854 at 10 o'clock in the forenoon and to continue from day to day until all the testimony has been taken, in pursuance of a commission duly issued out of the clerk's office of this court.

The witnesses to be examined on behalf of the complainant's petition are J. P. G. Foster, James Thomson, Louis H. Meyer, Morris K. Jessup, John S. Kennedy, Mr. Strachen, Nathaniel A. Cowdray, and such other persons who may then be produced before the said commissioner on behalf of the said complainant.

J. B. C. DREW,
Sol. for Compl't.

Dated New York, September 29th, 1878.

To GEORGE P. RANEY, esq'r., solicitor for the defendants, and attorney-general, Tallahassee, Florida; and to JAMES M. BAKER, esq'r., solicitor for the defendants, Jacksonville, Florida.

855 UNITED STATES OF AMERICA,
Northern District of Florida:

Levi Philips, of the city of Jacksonville, county of Duval, district and State aforesaid, being by me duly sworn, on oath deposes and says, that on the 2nd day of October, A. D. 1878, at said city of Jacksonville, he served the within and foregoing notice to take testimony, &c., on James M. Baker, esq'r., to deponent known to be the person mentioned and described in said notice as one of the solicitors for the defendants in the therein-entitled cause, by delivering to and leaving with him a true copy thereof.

That this deponent is twenty-seven years of age, and such service was made between the hours of nine & ten a. m.

LEVI PHILIPS.

Subscribed and sworn to before me this 2nd day of October, A. D. 1878.
PHILIP WALTER, *Clerk.*

856 In the circuit court of the United States, northern district of Florida.

FRANCIS VOSE, COMPLAINANTS,
vs.
TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund of Florida and others, defendants. } In equity.

In re the petition of the complainant for payment of certain costs and expenses, etc., etc.

Depositions of Louis Henry Meyer, J. P. Géraud Foster, James P. Lowery, and John N. Whiting, witnesses for complainant.

STATE OF NEW YORK,
City and County of New York, ss:

I hereby certify that on Monday, the 21st day of October, A. D. 1878, before me, Sewall Sergeant, a commissioner duly appointed by a commission issued out of the circuit court of the United States,
857 northern district of Florida, and hereto attached, at my office, number 61 Wall street, in the city of New York, at the hour of ten o'clock in the forenoon, the parties to this proceeding appeared, the complainant by J. B. C. Drew, esq'r., and the defendant by James M. Baker, esq'r., and further proceedings herein were, by consent of counsel, adjourned to October 22d, 1878, at 10 o'clock in the forenoon.

OCTOBER 22D, 1878—10 a. m.

I was attended by the same counsel, and an adjournment was had until one o'clock p. m.

At one o'clock p. m. the respective parties appeared by the same counsel, and also by John N. Whiting, esq'r., of counsel for complainant.

Judge Baker *Judge Baker*, of counsel for the Trustees of the Improvement Fund, desires, at this point an exception, and raises the objec-

tion that it does not appear by the commission itself that it has
858 been issued by order of the court or judge, and he objects to any testimony taken under it for that reason.

LOUIS HENRY MEYER, a witness produced on behalf of the complainant, being of lawful age and sound mind, was produced before me, and, being by me first duly examined, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth touching his knowledge of the matters and things in controversy in the above-entitled cause, deposed and said as follows:

Examined by Mr. WHITING:

Q. Where do you reside?

A. On Staten Island, New York.

Q. You do business in New York?

A. Yes, sir.

Q. How long have you been in business in the city of New York?

Ans. I have been in business since 1836 in New York—different kinds of business.

Q. What has been your principal business during that time?

Ans. In former days, importer; afterwards, banker, and of
859 late years, since 1857 and 1858, have had charge of different railroad matters—reorganizing companies; have been president of a couple of roads. I am president of one now, and president pro tem. of another.

Q. Are you familiar with the reorganization of railroads?

Ans. Yes, sir; have been more or less engaged in it since 1857.

Q. And with the administration of trusts in respect to railroads and other property?

A. Yes, sir.

Q. And with the general administration of railways?

Ans. Yes, sir.

Q. With those having lands incident to their bonds in aid of their construction?

Ans. I have had something to with that.

Q. Please state the roads which you have assisted to reorganize, or in which you have taken a principal part in the reorganization.

Ans. The Milwaukee and Prairie du Chien, Chicago and Mississippi, now Chicago and Alton, Milwaukee and Mississippi. Those I have gone through the whole reorganization; also, the Davenport and
860 Northwestern, and have been interested in others more or less.

Q. State to what extent your experience has extended in the details of such reorganization and administration.

A. Well, I have been acting in those three first in the purchasing committee; called in the bonds, foreclosed the road, bought it in, and reorganized it; and the same in the Davenport and Northwestern.

Q. Are you familiar, to any extent, with the service of laymen as distinguished from lawyers in aiding reorganizations, and generally in being active as auxiliary to professional efforts in procuring the right administration of trusts and the general administration of corporate interests?

Ans. I believe I am familiar with it.

Q. In a case pending in the United States court, in the northern district of Florida, when there were trustees of defendants, called the Internal-Improvement Fund of Florida, administered by certain trustees, and which included large tracts of land, amounting to about

861 fourteen millions of acres, which had been granted in aid of internal improvements, and a considerable portion, if not all, of which were pledged to pay coupons on bonds issued by the railway companies in that State, in which the complainant in this case has commenced suit against the trustees and others to compel the administration of that trust, by agencies which the complainant employed and sustained, and by his own vigilance and personal efforts he had saved from spoliation, and subjected to the decree of the court the vast domain of over ten million acres of land, and had brought into the court large sums of money which from time to time had been distributed by its orders, and in doing which he spent at least three-quarters of his time for upwards of ten years in and about the various services which these proceedings required, which he initiated, and informed various people with whom he came in contact—counsel and others—in which he
862 had been, from time to time put off and delayed by the various parties in interest and their agents, and in which the whole proceeding was necessarily tedious, and cumbersome, and was detained, and prolonged, and but for his persistant and constant attention, from day to day, it is probable, or possible, that he would have failed in obtaining the redress which was finally obtained in the suit, in which he paid large fees to officers of the court and counsel out of his own means, and in which he found it necessary to institute proceedings in the courts of the State of New York, to rescue or save, or have properly administered funds lying in the city of New York, the sum of $100,000 having been actually realized; the complainant being the holder of about nine-tenths of the bonds and coupons issued by the railway company in Florida, and having in view his own personal protection and advantage as well as that of the other bondholders, and this application being made against the fund in court for his personal remuneration for services during
863 a period extending over ten years. What would you say would be a fair compensation for his services? You may estimate it yearly, or in such other way as is most common and satisfactory to you in forming your own estimate.

Judge BAKER. I object to the question because the item in the account of the complainant that he seeks to have taxed as costs in this case would not be allowed under the order of court or under any rule of chancery applicable to the case taxing costs, because the complainant is suing in his own right, and is not entitled to any salary for his services.

(It is agreed between the parties that counsel for the defendant trustees may take objection and exception to each and every of the interrogatories and answers of this deposition, with the same force and effect as if the same had been taken to the questions themselves or to the answers at the time they were put or given.)

864 A. He contributed his share, as well as any of the others, pro rata?

Q. Yes; and being practically the sole complainant and promoter of the litigation.

Ans. Well, I should think $10,000 a year would not be too much.

Q. If the charge had been limited by him to $2,500 a year, what would you think of it?

Ans. Uncommonly cheap, if he performed all those duties that you have recited; but if he has had other agents for him down there that had done everything for him, $2,500 would be thought ample.

Q. Do you take into consideration the fact that he had his own personal advantage in view as well as that of the other holders of the bonds?

A. Well, I didn't consider that affected the case.

Q. Have you had any experience in connection with cases, or do you know of any cases where allowances have been made to bondholders for special services in procuring the administration of trusts, the bondholders being non-professional men and working for the common advantage of themselves and other bondholders?

865 A. Oh, yes.

Q. Do you know whether or not in any case, or in more than one case, allowances have been made to bondholders so acting by any of the courts of the United States?

No. I have a case now pending on the subject. I don't remember any such case. I have now a case against the Chicago and Alton in Chicago, before Judge Drummond, of the United States circuit.

Q. I read from pamphlet marked Ex. A, and which is annexed to this deposition and forms part thereof—report of A. R. Meeks, special master—expenses of roads, from page 22, item number 39 (reads whole of item 39). The item referred to is found on page 7, fifth line from the bottom, and reads as follows: "To J. H. Mercer $6,928.16; what, if anything, have you to say as to the propriety of that charge by Mr. Mercer, and the reasonableness of the recovery which he had against Mr. Vose?

A. That was for two years, services and travel'ing?

866 Q. Yes, sir.

Ans. I think it is reasonable, if he was an efficient man; certainly it is reasonable.

Cross-examined by Judge BAKER:

Q. You say that you have known cases prosecuted by trustees of railroad bonds for salary—the allowance of salary before a court. Will you state the nature of the cases that you have known?

A. I don't remember.

Q. You stated one case in which you had made application?

A. I have; yes. I am suing that now.

Q. What is the nature of that case?

A. We were the trustees for the reorganization of the Chicago and Alton. We called in eight million and a quarter to eight million and a half of the old securities and issued a corresponding amount of new ones. In issuing them there is always more or less delay; sometimes you have got to hold the trust open to almost eternity. We have held that trust open, now, over 14 years, and can't get rid of it; be-

867 side, that we have another trust, also open 14 years. We wanted to get rid of the trust; made every effort; advertising here; even went to England and advertised there, and then proposed to the company to give us a bond of indemnity and take whatever assetts the trustees had. They refused to give the bond of indemnity and have refused to settle with us. We have had nothing for 14 years. We are suing to recover that.

Q. Were you individually interested in those bonds?

Ans. Very small.

Q. You are prosecuting that trust, then, for the benefit of others, not for yourself?

A. Mainly for the benefit of others.

Q. How was your trust created?

A. By the bondholders convening and appointing us.

Q. Did they or not in your appointment, either by express stipulation or by inference, allow you a salary?

A. No; the only reference to a recompense was, there was an amount of $300,000 bonds issued separate, out of which a further supply of rolling stock should be furnished, and out of which the reorganization excenses, including reasonable compensation to the active members there should be made.

868

It was understood, then, at the time of the creation of your trust, you were to have reasonable compensation for the duties performed by you?

A. That is always understood.

Q. Now you stated in reply to the question of the complainant's counsel that you thought a reasonable compensation to Mr. Vose upon the case stated by counsel would be $10,000?

A. I didn't understand that about Mr. Vose at all.

Q. I mean from the statement of the case made by counsel for Mr. Vose.

A. I said if that had done by a person from here, I should think it worth $10,000 a year.

Q. Well, now, suppose that that had all been done by Mr. Vose, as stated by counsel when he was nine tenths interested in prosecutiug his own case, the complainant in a suit at law, as is stated here; Mr. Francis Vose against The Trustees of the Internal-Improvement Fund, would you, upon a statement of that kind, say that he was entitled to a salary of $10,000 a year?

869

A. Why not? Unquestionably it comes out of his fund, he pays himself that part.

Q. Suppose he is prosecuting the case and has not more than a third or half of the bonds?

Ans. It don't matter what share he has if it comes out of the joint fund, he contributes to his own salary in proportion as he owns bonds.

Q. I am speaking not of the question of law, but I am speaking as to what you would think of his rate of compensation?

A. It would not alter it a bit whether he has an interest or not; not in my estimation. I might, if I have an interest, undertake a thing which I probably would not seek otherwise, but my compensation would not depent on whether I had any interest in it or not. That is the construction to be put upon it.

Q. You think that the amount of his compensation would not make any difference whether he was interested or not?

870

A. Not if it is paid out of the joint fund. If the other bondholders pay him a certain sum and the joint fund is not taxed at all, then I think it comes in in a different light.

Q. From your knowledge of matters of this kind, would you say that the compl't in the case would be justified in bringing a man from New York to investigate testimony, and to take lands in Florida, and to charge for the importation of a man from a distance, when the probabilities are, that you could get men at home that would understand the matter better.

Mr. WHITING. We object, and except to the question.

A. I would not look upon it as importing. I suppose I know somebody here in my neighborhood, I engage him and send him down to do that for me, because I know him.

Q. Would you suppose that you could get a man in New York that would understand that business better than a man in Florida would understand it?

Ans. No, I might not.

871

Q. Could you get as good a man; do you suppose that you

could get a man here to give testimony in Florida that would be as efficient as a man that could be procured in Florida?

A. I don't see why he should not be as efficient.

Q. Why?

Ans. Because if he is a competent man, he can go down and learn it very soon.

Q. Would not a man that knew it all, be more efficient?

Ans. Yes; but if I didn't know him——

Q. But if Mr. Vose has been for 10 years past living in Florida, ought he not to know about it?

A. In his judgment, I suppose he knew whether he was competent or not—whether he could find a man there or not. If I was trustee, I would look to it whether I had confidence in a man or not.

Q. Would he not have to show that there was no man in Florida that was competent to do that?

Ans. I would not undertake to say.

Q. I would like for you to say whether or not it would be proper?

872 A. I should once for all consider that wherever he goes he is entitled to have his own men in whom he has absolute confidence and who will do his bidding.

Q. That is for railroad men?

A. Yes; or land men, engineers, or surveyors, the same thing. I should not want anybody that I didn't know. I most certainly should not engage anybody that I did not know unless I could not help myself there.

Q. I suppose a case, that Mr. Vose has been so much in Florida that he would know men there that would be competent to hunt up testimony and land, to prevent tresspasses or to prevent fraudulent sales, and that would be more competent than any person he could bring from New York; would you not suppose so?

Ans. No, sir; I would not suppose so. I should never want to engage men anywheres that I didn't know, if I could possibly help it and could find somebody that I did know.

Q. Can you suppose he didn't know of any man in Florida?

873 Ans. It is a simple matter of confidence. If those that he did know were such men that he didn't choose to place confidence in——

Q. Suppose he could find a man that was competent in Florida, as a trustee would it not be his duty to employ him rather than bring a man from a distance?

A. It might be.

Q. Wouldn't it, if Mr. Vose could find a man in Florida that was competent to look after the lands of the Internal-Improvement Fund, would it not be his duty as trustee, for the purposes of economy, to emply that man in Florida?

A. He should oe as economical as he could for the fund.

Redirect by Mr. WHITING:

Q. Have you ever heard or known anything about this case or the parties to it until you were sworn?

A. Never knew anything at all about it till this moment.

Q. Not till you were sworn as a witness here?

A. Not until then.

D. H. MEYER.

Subscribed and sworn to before me this 22d day of October, 1878.

SWVALL SERGEANT,
Commissioner.

874 J. P. GIRAUD FOSTER, a witness produced on the part of the complainant, being of lawful age and sound mind, was produced before me, and being by me first duly examined, cautioned and swore to tell the truth, the whole truth, and nothing but the truth, touching his knowledge of the matters and things in controversy in the above-entitled case, deposed and said as follows:

Examined by Mr. WHITING:

Q. Where do you reside?
A. In the city of New York.
Q. What is your occupation?
A. I am an attorney and counsellor at law.
Q. How long have you been such?
A. Thirty years.
Q. Have you given, in the course of your experience, a good deal of attention——
A. Yes, sir.
Q. And to the incorporation of companies?
A. The incorporation of companies.
Q. The reorganization of companies?
A. Yes, sir.
Q. The administration of trusts in respect to companies.
A. Yes, sir.

875 Q. Has any of your experiences extended to railway companies which had collateral security for their bonds or their securities, grants of lands?
A. Somewhat, not much.
Q. How many railroad companies in reference to their reorganization and the administration of their trusts, have you been familiar with in the course of your practice?
A. Certainly seven or eight.
Q. Have they involved companies in different States of the Union?
A. Yes.
Q. Principally at the West?
A. Principally at the West.
Q. Yonr firm is Foster and Thompson?—A. Foster and Thompson.
Q. In a case pending in the United States court in the northern dist. of Florida, where there were trustees of defendants, called the Internal-Improvement Fund of Florida, administered by certain trustees, and which included large tracts of land amounting to about 14,000,000 acres

876 which had been granted in aid of internal improvements and a considerable portion if not all of which was pledged to pay coupons on bonds issued by the railway companies in that State, in which the complainant in this case has commensed suid against the trustees and others to compel the administration of that trust by agencies which the complainant employed and sustained, and by his own vigilance and personal efforts he had saved from spoilation and subjected to the decree of the court the vast domain of over 10,000,000 acres of land, and had brought into the court large sums of money which from time to time had been distributed by its orders, and in doing which he spent at least three-quarters of his time for upwards of ten years in and about the various services which these proceedings required in which he initiated and informed various people with whom he came in contact, counsel and others in which he had been from time to time put off and delayed by the various parties in interest and their agents, and in which the whole proceeding was necessarily

tedious and cumbersome, and was detailed and prolonged, and
877 but for his persistent and constant attention from day to day it is probable or possible that he would have failed in obtaining the redress which was finally obtained in the suit, in which he paid large fees to officers of the court and counsel out of his own means, and in which he found it necessary to institute proceedings in the courts of the State of New York to rescue or save, or have properly administered, funds lying in the city of New York, the sum of $100,000 having been actually realized, the complainant being the holder of about nine-tenths of the bonds and coupons issued by the railway company in Florida, and having in view his own personal protection and advantage as well as that of the other bondholders, and this application being made against the fund in court for his personal remuneration for services during a period extending over ten years. What would you say would be a fair compensation for such services? You may estimate it yearly or in
878 such other way as is most common and satisfactory to you in forming your own estimate.

A. I should think $5,000 a year would be a very moderate sum.

Q. And if he had charged $2,500 a year besides expenses, what would you say?

A. I should consider it a very moderate sum—that is, it being understood that complainant spent a great part of his time in Florida.

Q. In Florida and New York about that business?

A. Yes.

Q. Have you been familiar during your practice with the hearing auxillary aid on the part of non-professional bondholders in the prosecution and administration of trusts of this kind, and their enforcement by the courts?

A. Yes, sir.

Q. To what extent?

A. Well, the very first case, I recollect, is the case of the Chicago and Alton, in which the purchasing committee merely for duties attending to the sale, which did not occupy over six months, they received $5,000 apiece.

879 Q. Were you one of the counsel employed and somewhat active in the various cases of Greene C. Bronson and others against the La Crosse and Milwaukee Railway?

A. Yes.

Q. Have you any recollection of services of non-professional men being performed in that case?

A. Yes; I don't know what their compensation was.

Q. Do you know that they had compensation?

Ans. Yes, sir.

Q. Do you know whether special compensation was allowed by the United States court in and for the district of Wisconsin?

A. I cannot say.

Q. In the majority of cases with which you have been personally in accord has assistance been rendered by non-professional bondholders, and compensation received by them for their services?

A. Compensation is always given and received.

Q. In speaking of compensation, in what way is it generally received?

880 A. In the reorganization there is a fund provided for the expenses, which includes the expenses of the reorganization commit'ee.

Q. Have you, or have you not at this time, in view compensation pay-

able out of the fund in court, as a rule, or funds under the control of a court?

A. I have. In the case I recollect it was out of the fund in court, but, as a rule, it comes out of a fund that is contributed by the bondholders themselves, or arising from a sale of new securities.

Q. What would be your judgement in case the fund was the proceeds of the mortgaged or pledged property itself, and in the hands of the court; what would be your judgment as to payment out of the fund?

A. It would not effect my judgment.

Q. Have you any acquaintance with this case?

A. I never heard of the case. I thought the Internal-Improvement Fund had all disappeared years ago.

Q. And you have not been in any way consulted anterior to being sworn?

881 A. No.

Q. I read from printed pamphlet, Exhibit A, annexed to this deposition, from page 22, item No. 39 [reads the whole of item 39]. The question is, what have you to say of the propriety of that charge of itself, and as a claim upon the funds in suit?

A. I should think it was a very proper claim, very proper to employ*ed* an agent of that cha'cter, and that the compensation which he recovered was but a fair one for the amount of service which he performed. It states a good deal of it is for travelling expenses.

Cross-examined by Judge BAKER:

Q. I suppose you would qualify that by stating, provided his services were necessary for the purpose?

A. Yes, sir; I took that for granted.

Q. You understand, as an expert, that a trustee is not authorized to increase expenses and tax them, unless they are necessary and proper?

882 A. No; but he is autharized to employ all such agents and all such means, as will protect his trust fund, if, in his judgment, if he be advised by counsel, that it is necessary.

Q. If he was a trustee appointed by any competent court or person to take care of their property he might then properly exercise his own judgment but would he be allowed to exercise his own judgment without question if he was pursuing his own interest?

A. If he was appointed by the court or other parties I don't think it makes a particle of difference whether he was interested or not.

Q. Suppose a man is a self-constituted trustee pursuing his own interest and it happens that during that interest he takes charge of the interest of anybody else, would he be allowed to make charges against that fund in his own interest which were not necessary for services?

A. I don't suppose he would if they were unnecessary or unreasonable.

Q. You speak about being familiar with the execution of trust and the reorganization of companies. In your capacity—you have

883 served in that capacity—was it by appointment of court or by individuals interested?

A. By appointment of the individuals interested.

Q. By a corporation or bondholders?

A. Both.

Q. Did you not prosecute suits for the recovery of those interests?

A. How do you mean? For compensation thereof?

Q. No. Prosecute suits?

A. No, I did not. I have conducted the prosecution of suits for other

fied have been upon application to and upon the direction of the courts themselves.

Cross-examined by Judge BAKER:

Q. Will you state whether those cases were resisted after an application was made?

A. In the case of Mr. Fisher's application there was no formal resistance before the court.

Q. That was the case of the engineer?

A. That was the case of the engineer. In the case of Mr. Vose there was opposition at one time, but whether it lasted until the hearing before the court I would not like now to say without refreshing my
890 recollection. In the other instance there was opposition and a formal hearing and argument.

By Mr. WHITING:

Q. In the Great Western?

A. The Great Western.

By Judge BAKER:

Q. What was the nature of that case?

A. The Atlantic & Great Western?

Q. Yes, sir. What was the object of the suit and this committee? What was the nature of their services?

A. The Atlantic and Great Western Railway was a road running through the three States from Salamanca, on the Erie Road, to Dayton, Ohio. Each of those tracks had been seperately constructed by an organization within the territorial limits of the State, and those several organizations had consolidated into one corporation, which consolidated corporation by itself issued its own obligations, so that there were numerous classes of security differing in the properties upon which they were secured. Most of these securities were held over in England.

Q. By whom was the suit commenced?

891 A. The suit was brought by certain trustees who held some securities of each class, and who themselves were enabled to bring before the courts all grades of securities, while they desired to enforce the consolidated security itself, so as to maintain the entirety of the undertaking. The committee that was formed was a committee embracing these several interests—formed by the bondholders themselves over in England—who at stated meetings from time to time received the reports of the workings of the road and of the progress of the suit, and advised the bondholders as to what might be done, suggested plans of reorganization, received the securities, issued certificates, and things of that kind.

Q. The purpose of the committee was to effect through the court a reorganization by compromise?

A. Yes; that is founded upon a foreclosure of some one of these mortgages, and as should be agreed upon by the majority in England.

Q. So it was not a test of the rights, but a compromise, as I
892 understand you, and this committee were to arrange matters?

A. This committee, I may say, advised very fully with counsel, bot hin England and also in the several States of New York, Pennsylvania, and Ohio, with reference to the position of the different securities. I remember we had Mr. O'Conor's opinion in New York, and Mr. Black's in Pennsylvania, and Judge Ranney's in Ohio, and so on.

Q. Was the road organized under this suit?

A. Under this suit there was a surrender back to the railway company of the railway property, the railway company having been put in funds to meet some of the back interest.

Q. What did the committee really do to bring about that?

A. Well, they had been rendering such services as they did render for about two years, excepting the reorganization.

Q. Was this committee interested? Were they acting for others or for themselves?

A. They were bondholders.

Q. I don't mean if they had an interest. Were they self-constituted or appointed?

893 A. They were not self-constituted, but appointed by a meeting of bondholders.

Q. They were not a self-constituted body, but by appointment?

A. By appointment.

Q. In relation to this Vose case, what was the character of the services that Mr. Vose rendered in the case? Do you know?

A. Well, my knowledge about that is rather limited and vague. Mr. Potter was acting as counsel for Bronson and Knapp, who were the trustees of the land-grant mortgage of the La Crosse Road. Some disputes had arisen as between sections of the bondholders secured by that mortgage, and litigations thence arose, that, I think, are still pending to a greater or less degree, and most of the knowledge of the La Crosse case that I have is confined to matters where the trustees themselves took advice as to what their course should be, with reference to the conflicting desires of the different sections of bondholders; but I remember, as a fact, that Mr. Vose, when the fund came

894 to be administered or distributed, asserted a claim for certain services that he had rendered in that matter, and that an allowance of $10.000, was made, and that it was objected to on the part of some of the bondholders; but, as I sa , I can't recall, just now, whether those objections went before the court or not.

Q. Was Mr. Vose a complainant in that suit?

A. The suit had been instituted in the name of the trustees.

Q. And not in the name of Mr. Vose?

A. And not in the name of Mr. Vose.

Q. And the services he rendered were services for the trustees?

A. He had claimed, as I remember it, that the service that he rendered was a service rendered for the benefit of the bondholders in this city.

Q. Is that case reported?

A. The La Crosse case?

Q. Yes.

A. I don't know whether it is or not—I mean as to that point. It is on many other points in the case, but as to that application I don't know.

Q. Before whom was it tried?

895 A. I don't know. It was Judge Miller, wasn't it?

Q. Have you seen the order?

A. Oh, I have seen it. The Atlantic and Great Western cases, I think, are not reported, but there were opinions handed down by the court.

Q. You have seen the order made by Judge Miller, but you don't know precisely upon what grounds it was granted?

A. I would not pretend to give my recollection of it just now.

Q. These cases that you speak of, they were allowances made in foreclosure suits?

A. Yes, sir.

Q. Will you state whether or not such allowances in the city of New York, in foreclosure suits, are made under statute?

A. Not such allowances as those I have spoken of. Our statute does provide for a certain allowance that is given to the parties to the suit, or to the attorney or counsel.

Q. Do your rules allow any other?

896 A. The court has discretion to make such disposition of the fund as in its judgement is proper, including an allowance to any deserving party.

Q. Do they make that allowance under the taxation of costs between party & party?

A. Not at all, sir; under their chancery power to distribute the fund as to it seems good.

Q. Is this allowance made under the common law, or under your statute law?

A. It is made under what we probably would call the equity jurisdiction of the court.

Q. That is the common law, I suppose?

A. Yes, sir.

Q. Were there not modes of costs between party and party and costs between solicitor and client?

A. Under our system of practice here as regulated by the code, costs are given nominally to a party to the suit, and against the other party to the suit.

Q. But are not those costs specified in your code?

A. Oh, they are enumerated in the code.

Redirect by Mr. WHITING:

897 Q. You have made reference to the law of New York in regard to costs. What has been the habit of the courts in New York and elsewhere in your experience in administering funds and distributing them among parties in the way you have indicated as part of their equitable jurisdiction? Have you or have you not understood that it was in the exercise of this jurisdiction of the court that allowances to parties were made in the manner you have described?

A. I certainly so understood, sir.

JAMES P. LOWERY.

Subscribed and sworn to before me this 22d day of October, 1881.

SERVALL SERGEANT,
Commissioner.

JOHN N. WHITING a witness produced on behalf of the complainant, being of lawful age and sound mind, was produced before me, and being by me first duly sworn, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth, touching his knowledge of

898 the matters and things in controversy in the above-entitled case, deposed and said as follows:

I am an attorney and counsellor-at-law, and have been for over thirty years. I reside in New York, and am admitted in the various courts of New York and the United States courts. I have had considerable experience in the administration of railway trusts, the foreclosure of railway mortgages, and the control and disposition of railway funds. In the foreclosure of what is known as the land-grant mortgage

of the La Crosse & Milwaukee Railroad Company, Mr. Francis Vose was a holder of certain of the bonds—of the land-grant bonds—which in the year 1859 were largely in default. The company was largely in default in respect to the interest due on those bonds. At that time I was associated with Mr. Clarkson N. Potter. Mr. Francis Vose made himself active in the institution of the suit by securing the assent of the bondholders to its commencement and prosecution, and gave his
899 attention to its prosecution in aid of the trustees until final judgment, and subsequently in connection with the disposition of the fund and the reorganization of the company. He was in frequent communication with counsel in Milwaukee, with the trustees here, and with Mr. Potter and myself after the fund had been realized and was in court, and while the court was administering the road by its receiver. Mr. Vose applied upon petition to be remunerated for his services, which I have generally described, and to which he gave a very large portion of his time, going frequently to Milwaukee, as I have stated. I made application to Judge Miller, upon Mr. Vose's petition, for compensation. Other applications were made for compensation in the course of the administration of the trust; and Judge Miller, after considerable reflection and postponement of the petition, gave Mr. Vose compensation out of the fund. My recollection is that the aggregate amount
900 which Mr. Vose received for disbursements, and his attention to the case during a year or two, was between six and ten thousand dollars; the precise amount I have forgotten. I saw the order and took a very large part in the discussion and applications which finally culminated in the decision which Judge Miller made. The application was opposed by some of the parties in interest in the property—whether they were bondholders under the land-grant mortgage, or other parties in interest, I have now forgotten; but I know they were heard. I do not know where the order is; it is undoubtedly on record in Milwaukee in the United States courts clerk's office. The case as to this application, so far as I have ever heard, is not reported, an' I do not know that Judge Miller gave any written opinion; I know that he gave an oral opinion ore tenus, and the payment was placed on the general equity powers which he possessed sitting as a court of equity to
901 administer and distribute the fund among such parties as were as between themselves fairly entitled to compensation as promoters and aiders of the general interests of the bondholders.

By Mr. DREW:

Q. You say the case was not reported. I suppose you mean to say that the interlocutory order was not reported?

A. That is what I meant to say. The case itself is largely reported in the United States Reports, but the interlocutory order has not been reported; but the case has many phases and subdivisions of the contest which were reported on appeal to the United States court at Washington.

Q. This case you have testified of was pending in the United States circuit court for the district of Wisconsin?

A. Yes.

Q. Judge Miller presiding?

A. Judge Miller presiding.

JOHN N. WHITING.

Subscribed and sworn to before me October 22, 1878.

SERVWALL SERGEANT,
Commissioner.

Adjourned to Wednesday, Oct. 23, 1878, at 10 o'clock a. m.

902 WEDNESDAY, *October* 23d, 1878—10 a. m.

JOHN N. WHITING, cross-examined by Mr. Baker, testified as follows:

Q. Mr. Whiting, will you please state whether or not this suit was instituted by Mr. Vose in his own name?

A. The suit as to which I have been testifying?

Q. Yes, sir.

A. It was not.

Q. You have testified as to the foreclosure of what is known as the land-grant mortgage of the La Crosse and Milwaukee Railway Company. Who were the plaintiffs in the case?

A. The trustees named in the mortgage.

Q. In what way was Mr. Vose interested in instituting the suit?

A. He was a large holder of bonds received for railway iron delivered to the company.

Q. What was the character of that trust?

A. The ordinary trust in a railway mortgage. The mortgage was somewhat voluminous and precise in its definitions of the trust, as I recollect.

Q. Are they not parties under the mortgage? Did they execute the mortgage?

A. They were mortgages for the benefit of the purchasers of the bonds.

903 Q. You stated that Mr. Vose had acted in securing the consent of the bondholders?

A. Of a portion of them, and seeing that the suit was properly instituted, and in aiding the local counsel in Milwaukee, and to a considerable extent, I may say, perhaps, supervising and aiding in regard to the production of the testimony and the pressure of the case to a hearing. Those were the general character of his services.

Q. Mr. Whiting, what was the state of the case, or condition of the case, at the time this allowance was made?

A. In the progress of the case itself looking to a foreclosure, and in which there had been defenses interposed by other outstanding interests and creditors, the motion was made for the appointment of a receiver, and a receiver of the company's property was appointed, and the receiver administered the railroad under the direction of the United States court in Wisconsin for several years. The revenues that the receiver took possession of were paid into court.

904 A sale was at length ordered under a decree of foreclosure, which decree settled the equities and priorities of the bondholders as between themselves, several new and interesting questions as between the bondholders themselves having been raised in the progress of the suit. Mr. Vose attended upon the hearings, furnished information, and was rather the most ready and accessible source of information which the counsel for the trustees had, and after the decree and after the sale, and while the receiver *cautione*d to hold the funds, and before its distribution by the court, and while questions arising on foot of the decree were being discussed and held for advisement by the judge, Mr. Vose at length and late in the proceedings applied by petition that he be rem*e*merated for his expenses and for an allowance for time, services, &c., which Judge Miller ultimately granted. I have endeavored to remember the amount, since my testimony in chief, and I am inclined to think, from a very general recollection only, that the allowance was

905 not as great as might have been understood from my testimony yesterday, but was in the neighborhood of seven or eight thou-

sand dollars. I have a vague impression, but about which I cannot be as definate as I could wish, that Mr. Vose received a small sum in the neighborhood of $1,500 first, and a larger sum later; the two together may have been more than six or seven thousand dollars, but I have that sum prominent in my mind as being the allowance.

Q. You spoke of land and receivership of the railroad. Did the trust include the railroad and the lands, and was that trust a first or second mortgage?

A. To answer that question will require a somewhat lengthy explanation. The railway and the right of the company to the lands (which had not been formally taken possession of by the company) was foreclosed and sold.

Q. At the time this order of allowance was made to Vose, was the purchase money of that sale in court?

906 Q. My recollection is, that an enabling clause was put in the decree, authorizing the purchasers to buy in the railway, and turn in their bonds in payment, which was done.

Q. From what source did the moneys in court come, out of which Mr. Vose received his allowance? From the trustees of the road or the sale of the road?

A. From the earnings of the road, as I always understood, in the hands of the receiver.

Q. You stated that there was some opposition to Mr. Vose's allowance? Did that opposition *cause* from the trustees—the plaintiffs in the suit?

A. I must answer from—not a distinct recollection; my impression is that the trustees made a form*ula* opposition or declined to aid Mr. Vose. The main opposition, as I recollect it, came from the other interests, of which there were many connected with the road.

JOHN N. WHITING.

Subscribed and sworn to before me this 23d day of October, 1878.

SERVALL SERGEANT,
Commissioner.

907 Exceptions and objections were made made by James M. Baker, solicitor for The Trustees of the Internal-Improvement Fund as follows, that is to say.

The Trustees of the Internal-Improvement Fund, by James M. Baker, their solicitor, object to the introduction of the foregoing testimony under the agreement above stated.

1st. Because there is no rule of chancery practice which authorizes allowances of a salary as costs to a complainant suing in his own right or interest.

2nd. Because the order of December 29th, 1870, under which these proceedings are had, does not authorize inquiry by the master as to personal services of complainant or the value of such services.

3d. That no costs or allowance can be made under said order except such as are properly taxable between party and party.

4th. Because the witness for the petitioner who testified to the
908 value of the petitioner's services, are not shown to be experts. The cases referred to by them, upon which they base their testimony, are essentially different from the case in which this allowance is asked.

5th. Because the questions asked by the counsel for the petitioner as to the proceedings, orders, and resistances to orders, made in said cause, are based upon the testimony of complainant, Francis Vose,

taken before Master A. R. Meek, which is not sustained by the record in the cause, and was at the time excepted to. The records of the court in the case being the best testimony, and much of the time, expenses, and services claimed to be rendered were in other cases prosecuted in the State of Florida against other persons.

6th. Because the several witnesses have improperly given evidence of the purport of orders and proceedings in other cases granting allowances. The records and orders in such cases, if relevant, being the best evidence of what they contain.

909 7th. Because the entire evidence is irrelevant and immaterial.

(Signed) JAMES M. BAKER,
Sol. for Defts.

SERVALL SERGEANT,
Commissioner.

I further certify that the foregoing depositions of Louis Henry Meyer, of J. P. Giraud Foster, of James P. Lowery, and of John N. Whiting were, by consent of the counsel for the respective parties, taken by a stenographer in my presence and hearing instead of being reduced to writing by me; that such depositions were written out from his notes by said stenographer, and that the foregoing are the depositions as so written out; that after the same had been so written out the said depositions were as written out presented to and read over by the counsel for the respective parties, to wit: J. B. C. Drew, esq., of counsel for the complainant

910 and James M. Baker, esq'r, of counsel for the defendants, and were by the said counsel accepted and agreed to as being the depositions of the witnesses aforesaid; that each of said depositions was taken down by the said stenographer in the presence of each deponent; that I have carefully read over to each of the deponents above-named to said Meyer, to said Foster, to said Lowery, and to said Whiting, his deposition, and they respectively subscribed the same, each his own deposition, in my presence. That the reason for taking said depositions was and is that *that* the deponent Louis Henry Meyer resides at Staten Island, in the county of Richmond, and State of New York; and that the deponent' J. P. Giraud Foster, James P. Lowery, and John N. Whiting respectively reside in the city, county, & State of New York, and the residence of each of said deponents is more than one hundred miles from Jacksonville, Florida, where this cause is appointed to be heard.

911 I further certify that I am not of counsel or attorney to either of the parties to this suit nor interested in the event of this cause; and that it being impracticable for me to deliver said depositions with my own hand into the court for which they were taken, I retained the same for the purpose of being sealed up by me and speedily and safely transmitted by mail to the said court for which they were taken and to remain under my seal entire until opened; that the fee for taking said depositions, $60, has been paid to me by the complainant, and that the same is just and reasonable for the service.

Given under my hand and seal, at the city of New York, this 24th day of October, A. D. 1878.

SERVALL SERGEANT,
Commissioner.

912 In the U. S. circuit court, 5th judicial circuit, northern district of Florida. In equity.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al.

To the honorable the judge of said court:

Under a*ll* order of said court dated February 15th, 1878, in the above-entitled cause, it was, among other things, directed:

Third. It is further ordered, adjudged, and decreed that all other in said account or bill of particulars, allowed by the master, be referred to a master, that further testimony may be taken in regard to the same under the original order of reference, which is to that end continued in full force.

Fourth. It having been agreed among the counsel of the parties at variance that J. H. Durkee, esq., should be appointed master pro
913 hac vice under this submission it is ordered accordingly. Under this order of reference no testimony has been taken before me. A commission was issued in this cause, on the 19th of September, A. D. 1878, directed to Sewell Sergeant, commissioner of New York City, empowering him to take the testimony of certain witnesses named in said commission, which testimony was taken, and is herewith submitted.

Testimony was also taken in the city of Jacksonville, Florida, by Levi Phillips, esq., a notary public, in February, 1879, during my enforced absence from the city, in this cause, on the part of the complainant, which is also submitted. No rebutting testimony or testimony on the part of the defendants has been taken.

No report was made by me at the fall term of the court in 1878, as it was understood that all parties desired to take further testimony.

Respectfully submitted.

JOSEPH H. DURKEE,
Master, pro hac vice.

JACKSONVILLE, FLA., *Nov. 2d*, 1879.

914 (Indorsed:) In U. S. circuit court, 5th judicial circuit, northern district of Florida. Francis Vose vs. The Trustees of the Internal-Improvement Fund et al. Report of master, J. H. Durkee. Filed Nov. 3, 1879. P. Walter, clerk.

915 Circuit court of the United States, northern district of Florida.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT Fund et al, in re.

Cost and expense of complainant before J. H. Durkee, master.

It is stipulated that the depositons taken before Servell Sergeant, commissioner, in the city of New York, on behalf of complainant, now

on file in the clerk's office, be published and transmitted to Durkee, master, subject to exceptions by defendants.

Dated November 22d, 1878.

J. B. C. DREW,
Solicitor for Complainant.
JAMES M. BAKER,
Solicitor for Defendants.

The envelope in which the foregoing depositions was enclosed bears the following endorsements: (Address:) Philip Walter, esq., clerk of the circuit court of the United States, northern district of Florida. Jacksonville, Florida.

916 *Depositions in Vose vs. Trustees et al.*

In repetition of complainant for payment of costs, expenses, etc., before Joseph H. Durkee, esq., master in chancery. Sewall Sergeant, commissioner.

Received this package from Sewall Sergeant, commissioner, at the city of New York, this first day of November, 1878.

Assistant P. M.

Received and filed 5th November, 1878.

P. WALTER, *Clerk.*

Opened by consent this 22d day of November, 1878.

P. WALTER, *Clerk.*

(Indorsed:) Filed 5th Nov., 1878. P. Walter, clerk.

917 In the United States circuit court, northern district of Florida.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL-IMPROVEMENT FUND of Florida et al.

In the matter of the petition of the complainant for allowance of costs and expenses.

Testimony taken before Levi Phillips, esq., notary public, in the absense of Joseph H. Durkee, esq., the master appointed for that purpose, said testimony being taken by consent.

On this 22nd day of February, 1879, appeared the complainant and his solicitor, J. B. C. Drew, esq., and the defendants, trustees, by their solicitor, James M. Baker, esq.

FRANCIS VOSE, being duly sworn, testifies as follows:

Question 1. Have you read the testimony of Mr. James P. Lowery, on page 19 of the printed testimony taken in New York, and also the testimony of Mr. J. N. Whiting, on page 24 of the same pamphlet? If so, state as near as you can the exact amount of the allowance made to you out of the fund in the case of the La Crosse Railroad Company foreclosure testified of by Messrs. Lowery & Whiting?

Answer 1. I have read such testimony, and the amount allowed to me out of the said fund was nearly eighteen thousand dollars.

918 Ques. 2. State what period of time you were rendering services for which this allowance was made?

Ans. To the best of my recollection, it was about three years.

Q. Please state if, to your knowledge, other payments were made out of the fund in that case for counsel and attorney's fees.

Ans. There were.

Ques. 4. Were or were they not paid to counsel and attorneys of parties who were instrumental in the litigation in bringing the fund into court and protecting the same?

Ans. They were paid to counsel of such parties.

Ques. 5. State as near as you can the amounts so paid to counsel and attorneys.

Ans. I think from $8,000 to $10,000. (The witness having consulted his memoranda, answers that the amount paid to counsel and attorneys out of said fund was from $25,000 to $28,000, instead of from $8,000 to $10,000, as last above stated.)

Ques. 6. I call your attention to item No. 22 of petition. Some of the vouchers are for copying papers and rendering statements. I now ask you if the papers so copied, and the statements so made, were or were not for your purely personal purposes?

Ans. They were not for any personal purposes.

Ques. 9. State for what purpose you procured the copies of papers and statements referred to from Judge Doggett?

Ans. For the purpose of getting information to be used for the benefit of all the coupon-holders interested in this suit, as well as for myself, which coupon-holders were interested with me.

919 Ques. 8. I call your attention to item No. 18—T. W. Brevard. You , in addition to taking testimony in this case, that he was employed in obtaining proof, documentary evidence, necessary papers, and exhibits in this case. State, if you remember, what particular point or branch of the case the documents, etc., referred to were pertinent to and used.

Ans. They were used more especially to set aside fraudulent grants made to the Florida Improvement Company and the Southern Inland Navigation Company.

Ques. 9. I call your attention to item No. 6—E. M. Randall. You stated in your previous examination that the payments made from 1874 to 1877 were principally made for services as counsel in this case, and you stated that you thought a portion of it was paid for services in previous suits. State if you have examined that account since, and, if you can, state positively that all the payments made since 1874 were for services in this suit.

Ans. I have examined that account since giving that testimony, and the payments made to Mr. Randall since 1874 were for services in this suit.

Ques. 10. I call your attention to item No. 3—Evarts, Southmayde, & Choate. What amount was paid them for services in this suit—I mean the suit against the trustees?

Ans. Eight hundred and seventy-five dollars ($875.00).

Ques. 11. I call your attention to item No. 15—J. N. Whiting. What period of time did his service cover?

Ans. From 1868 to 1875, in this suit.

920 Ques. 12. At what places has it been necessary to employ coun-

sel to conduct the litigations in this case, and at what places has this case and branches of it been heard by judges?

Ans. At New York, Albany, Washington, Savannah, Montgomery, Jacksonville, and Tallahassee.

Ques. 13. Please state, generally, how it happened that so many counsel have been employed, & if they have been all employed together, or have acted for the complainants at different periods of time in the progress of this suit.

Ans. From the length of time that has elapsed since this suit was commenced, now from ten to twelve years, several of the counsel having changed their residence, others having died, and some having become disqualified by assuming official positions. Such counsel were mostly employed at different periods of time, or necessarily occupied at different places at the same time.

Cross-examined by J. M. BAKER, Esq.:

(The solicitor of the defendant trustees objects to the introduction of the foregoing testimony—

First. Because complainant, under the rules of chancery practice, is not entitled to an allowance of salary in a suit in his own interest.

Second. Because the order of December 29, 1876, by Judge Locke, does not authorize enquiry as to the personal services of complainant, nor the value of such services.

Third. That no such allowance can be made under such order.

Fourth. Because the case referred to by witness, and upon
921 which he bases his testimony, is essentially different from the case in which this allowance is asked.

Fifth. Because the testimony of the witness refers to services in obtaining orders and resistance to orders made in other cases, and is not confined to the case of Francis Vose against The Trustees of the Internal-Improvement Fund, and because the said testimony is otherwise irrelevant and improper.)

Ques. 1. What services did you render in the La Crosse Railroad foreclosure suit?

Ans. It was in attending to the interests of the bondholders and protecting their interests, and obtaining a foreclosure of their mortgage, covering the property of the La Crosse and Milwaukee Railroad Company.

Ques. 2. Were you a party to said suit on the records; a party, plaintiff or defendant?

Ans. I presume I was. The suit was brought in the name of the trustees of the mortgage securing the bonds. There were different interests between the bondholders and different suits were brought, and I do not now recollect whether I was made a party plaintiff or defendant.

Ques. 3. Were you a bondholder; and, if so, which class of bonds did you hold, first or second?

Ans. I was a bondholder of what they called land-grant mortgage-bonds. There were two different issues at different years. One class, the first issues, claimed priority over those of the second issue, so called. I held the first-issue bonds.

Ques. 4. Was the allowance you speak of, made to you before or after the condemnation and sale of the property?

922 Ans. I believe it was before the sale of the property.

Ques. 5. Will you state at whose request you rendered the services spoken of?

Ans. I believe it was of my own motion, without the request of any one.

Ques. 6. I see that in Mr. Whiting's testimony there was opposition made to the allowance. What party in interest made such opposition?

Ans. Parties having interests subsequent to those of the first-mortgage bondholders.

Ques. 7. Will you state whether or not the La Crosse and Milwaukee Railroad Company was at that time insolvent?

Ans. It was insolvent.

Ques. 8. Did the road sell for more than enough to pay the first-mortgage bonds and interest, and did it sell for enough to pay such bonds?

Ans. It did not sell for enough; there was a large deficit, but it was sold under a plan of reorganization and was bought by the first-mortgage bondholders.

Ques. 9. Will you state what attorneys and who they represented, that received allowances for attorney's fees?

Ans. One was Mr. Clarkson N. Potter, whom I retained to act as solicitor in foreclosing the mortgage, for a fee of $5,000, for which I became personally responsible, and which was afterwards paid out of the fund in the receiver's hands. The amount actually paid Potter, I think, was some $7,000 or $8,000 out of the fund.

Green C. Bronson acted as counsel for the first-mortgage bond-
923 holders. I can't say definitely how much he was paid, but to the best of my recollection, it was from $5,000 to $10,000. He was paid from the fund.

Ques. 10. Will you state whether these items referred to under No. 22, running from February 8th to May 15th, was for taking testimony in the case by A. Doggett?

Ans. They were all for taking testimony in this case, which testimony is on file unless taken from the files.

Ques. 11. Were these items of cost paid to Mr. Doggett for taking testimony approved by the court?

Ans. They were not, for the reason that the master, Doggett, required the payment of his fees from me when the services were performed.

Ques. 12. Mr. Vose, you stated that you procured copies mentioned in said bill of A. Doggett, to be used for the benefit of all coupon holders; will you state in what manner you used them?

Ans. I used them for obtaining information in conducting and carrying on the litigation.

Ques. 13. Will you state whether or not you employed T. W. Brevard, as counsel in this case?

Ans. I employed him as attorney, principally in obtaining information.

Ques. '4. Whose testimony did Mr. Brevard procure?

Ans. His services were more in getting facts and proofs as to the fraudulent conveyance of lands, with the view of getting them restored to the fund.

Ques. 15. What was the nature of the services rendered by E. M. Randall?

Ans. It was for counsel and advice, generally, in conducting
924 the litigation in this suit.

Ques. 16. Will you state whether Judge Randall was employed in drafting papers, or prosecuting said suit before the court?

Ans. He may have drafted some papers, but he never appeared in court for me in this case. I don't think any papers in this case were signed by him as counsel.

Ques. 17. Will you state how many lawyers were engaged by you in the prosecution of this suit between 1874 and 1877, the time during which you paid Judge Randall as counsel.

Ans. The employment of Judge Randall in this case commenced at the time the amended bill was filed in 1870, but the payments were not made until 1874. During a part of the time Mr. Bisbee was employed; also, General Jackson, of Savannah, or Jackson, Lawton & Bassinger, as solicitors of record. Mr. Whiting, of New York, and Strong & Sheppard, of New York, acted as counsel in this case. The latter firm acted as attorneys and counsel in the suit to recover the sinking fund in the suit in New York; Evarts, Southmayd & Choate, of New York, as attorneys and counsel in this suit; also, John D. Pope, of Savannah, whose services ceased on the argument of the motion for injunction before Judge Bradley, he having subsequently changed his residence from Georgia to St. Louis, Missouri; also, David S. Walker, of Tallahassee, as attorney & counsel; Judge Curtis, of Boston, as counsel in this case; also, J. T. Hoague, of New York, as attorney in this case; also,

925 E. W. Stoughton, of Washington, as counsel in this case; W. G. M. Davis, as counsel and attorney, from January, 1875, to May, 1876, at Jacksonville, during the time of his engagement acted as solicitor; also, J. B. C. Drew, of Jacksonville, as attorney and counsel at Jacksonville, in this suit.

Ques. 18. For what services was payment of $875 made to Evarts, Southmayd & Choate, and when was such service rendered?

Ans. It was paid for costs and attorneys' and counsel fees, and legal services rendered in this litigation at different times, from the commencement of this suit to 1875.

Ques. 19. Were those services rendered in New York or Florida, and what was such service?

Ans. Such as is usually performed by attorneys; preparing papers, procuring exemplifications of records. (The witness refers for a more complete answer to the account on file.)

Ques. 20. Did they prepare any original papers for file in this case?

Ans. I don't recollect that they did.

Ques. 21. What was the nature of the service rendered by J. N. Whiting in this suit?

Ans. It was for advice and counsel on different matters and questions that arose in the progress of this suit during a period of five years.

Ques. 22. Was there ever any hearing of this case against the trustees and others at New York, Albany, Washington, Savannah, Tallahassee, or Montgomery?

926 Ans. There were hearings in this case noticed for Savannah and Montgomery, but there were no hearings in this case at New York, Albany, Washington, or Tallahassee.

To be more particular, I will state that the first injunctional order was granted by Judge Woods at Montgomery; that a motion was made and noticed by the defendant trustees to vacate this injunctional order before Judge Bradley at Savannah, Georgia; and also the complainants gave notice for a motion for attachment against the trustees for contempt, and a motion to appoint a receiver, to be heard at the same time, but Judge Bradley declined to hear these motions at Savannah on jurisdictional grounds, and came to Jacksonville expressly to hear these motions. The hearings in New York and Albany were had in a case growing out of this, for the collection of the sinking fund, which

was a portion of the subject-matter of this litigation on deposit to the account of the defendant trustees.

The hearing at Washington was the appeal of the receiver in this case, in the suit by him against the Florida Railroad to collect the debt due the fund in this case from it.

I am not positive in regard to an actual hearing at Tallahassee, but the records will show.

Ques. 23. Who of the counsel employed by you have changed their residence?

927 Ans. General Finley, J. D. Pope, Mr. Drew, temporarily.

Ques. Who have died?

Ans. J. P. Sanderson, who died in 1871; J. P. C. Emmons, who died in 1876; Mr. Curtis, who died in 1874 or 1875; Mr. Strong, sr., who died in 1874.

Ques. 25. Who became disqualified by assuming official positions?

Ans. Mr. Bisbee, who became attorney-general, and thereby a defendant ex officio; J. J. Finley, who was elected to Congress, and unable in consequence to attend; E. W. Stoughton was appointed minister to Russia.

Redirect examination:

Ques. 24. You state that your allowance in the La Crosse case was made before the sale of the property. From whence was the fund derived out of which you and the counsel were paid?

Ans. From the earnings of the road and the sale of lands belonging to the trust fund.

F. VOSE.

I, Levi Phillips, before whom the foregoing testimony was taken, do hereby certify that the same was taken and reduced to writing by myself, and signed by the witness in my presence, on the twenty-second day of February, A. D. 1879.

[L. S.] LEVI PHILLIPS,
Notary Public, Duval County, Florida.

(Indorsed:) Testimony taken before Levi Phillips, notary public, February, 1879.

928 FRANCIS VOSE
vs.
TRUSTEES OF THE INT. IMP. FUND ET AL.

This case coming on for further hearing under the decree of this court, rendered therein on Feb'y 15th, 1878, & upon the supplemental report of J. H. Durkee, esq., appointed master pro hac vice in connection with the previous report of A. B. Meek, esq., after hearing arguments of counsel on both sides and consideration by the court, it is ordered, adjudged, and decreed that the following items embraced & numbered in the report of the said Meek, as they are numbered below, be now allowed:

Item No. 22, paid to A. Doggett	485	46
" " 24, " " Hugh A. Corley	1,155	67
" " 39, " " J. H. Mercer	6,928	16
" " 40, " by F. Vose	1,937	32
" " 41, " " " "	15,003	35
" " 42, " " " "	34,625	00
	$60,134	96

935 United States circuit court, fifth judicial circuit, northern district of Florida.

I, Philip Walter, clerk of the United States circuit court, 5th circuit and northern district of Florida, do hereby certify that the foregoing record, numbered from 1 to 9, is a true and complete record, so far as the same is necessary for the purposes of this appeal, in the case of Francis Vose et al. vs. The Trustees of the Internal-Improvement Fund et al., as appears from the files & records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the city of Jacksonville, in the district & circuit aforesaid, this 30th day of July, 1880, and of our Independence the 105th year.

[SEAL.] PHILIP WALTER, *Clerk.*

(Indorsement on cover:) No. 601. The Trustees of the Internal-Improvement Fund of the State of Florida, appellants, vs. Charles P. Greenough, administrator of Francis Vose, deceased. N. Florida, C. C. U. S. Filed 5th October, 1880.

OFFICE SUPREME COURT U. S.
FILED
MAR 11 1882
JAMES H. McKENNEY, Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.

No. 601.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, Appellants,

vs.

CHARLES P. GREENOUGH, Administrator, &c., of FRANCIS VOSE, Appellee.

BRIEF FOR APPELLANTS.

C. W. JONES,
Of Counsel.

Thomas McGill & Co., Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, APPELLANTS,

vs.

CHARLES P. GREENOUGH, ADMINISTRATOR, &c., OF FRANCIS VOSE, APPELLEE.

No. 601.

BRIEF FOR APPELLANTS.

STATEMENT.

The appellee, the complainant below, alleges in his bill that the Legislature of Florida passed an act to provide and encourage a liberal system of internal improvements in the State, which was approved January 6, 1855, and which is known as the "Internal Improvement Act." By the provisions of the act, so much of the five hundred thousand acres of land granted to the State of Florida for internal improvement purposes, by an act of Congress passed March 3, 1845, as then remained unsold, and the proceeds of the sales of such of said lands theretofore sold as then remained on hand unappropriated, and all proceeds that

might thereafter accrue from the sales of said lands; also, all the swamp or overflowed lands, or lands subject to overflow, granted to the State of Florida by an act of Congress approved September 28, 1850, together with all the proceeds that had accrued or that might thereafter accrue to the State from the sale of said lands, were thereby set apart and declared a distinct and separate fund, to be called the Internal Improvement Fund of the State of Florida, and were to be strictly applied according to the provisions of the act. For the purpose of assuring a proper application of said fund for the purposes declared by the act, said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management, and sale, were by the act irrevocably vested in five trustees, to wit, the Governor of the State, the Comptroller of Public Accounts, the State Treasurer, the Attorney-General, and the Register of State Lands, and their successors in office, to hold the same in trust for the uses and purposes provided in said act, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus money arising therefrom from time to time in stocks of the United States, stocks of the several States, or the internal improvement bonds to be issued under the said act, and drawing not less than six per cent. annual interest; also, the surplus interest accruing from such investments, and to pay out of said fund, agreeably to the provisions of said act, the interest, from time to time, as it might become due on the bonds to be issued by the different railroad companies under authority of the act. The Commissioner of Immigration of the State of Florida was by an act of the Legislature approved February 1, 1869, constituted a member *ex officio* of the said Board of Trustees of the Internal Improvement Fund.

The Internal Improvement Act further provided that all bonds issued under its provisions should be recorded in the office of the Comptroller of Public Accounts, and so certi-

fied by the Comptroller, and should be countersigned by the State Treasurer, and should contain a certificate on the part of the Trustees of the Internal Improvement Fund that such bonds were issued agreeably to the provisions of that act; and that the Internal Improvement Fund, for which they were trustees, was pledged to pay the interest as it might become due on said bonds.

All bonds issued by any railroad company under the act were declared a first lien upon its road-bed, iron, equipment, workshops, depots, and franchise, and upon a failure on the part of any railroad company accepting the provisions of the act to provide the interest on the bonds issued by said company, and the sum of one per cent. per annum as a sinking fund, as provided in the act, it became the duty of the trustees, after the expiration of thirty days, to take possession of, advertise, and sell the railroad and property of the said company; provided that in making such sale it should be conditioned that the purchasers should be bound to continue the payment of one-half of one per cent. semi-annually to the sinking fund until all the outstanding bonds were discharged, under penalty of an annulment of the contract of purchase, and the forfeiture of the purchase-money paid in. The act contained many other provisions necessary for its proper execution, which are not material here.

It declared certain lines of railroad proper improvements to be aided from the Internal Improvement Fund in the manner provided therein; among them a line from Amelia Island on the Atlantic to the waters of Tampa Bay in South Florida, with an extension to Cedar Keys in East Florida.

The bill also alleges that the Florida Railroad Company, at the time of the passage of the Internal Improvement Act already organized and chartered by the Legislature of the State of Florida, during the early part of the year 1855, did, in accordance with the provisions of the said act,

give notice to the Trustees of the Internal Improvement Fund of the acceptance by it of the provisions of said act for so much of the lines of said railroad company as lay between Amelia Island on the Atlantic and the waters of Tampa Bay in South Florida, with the extension to Cedar Keys in East Florida.

That in accordance with sections 8 and 9 of said Internal Improvement Act, the said Florida Railroad Company issued a large number of its coupon bonds in accordance with the law, for one thousand dollars each, which were dated the 1st day of March, 1856, and payable on the 1st day of March, 1891, in the city of New York, with interest thereon at the rate of seven per centum per annum, payable semi-annually. One hundred and ninety-five of these bonds came into the possession and ownership of the appellee, the complainant below, on which there is owing the entire principal and interest, except the interest coupons payable in 1860. That on or about the 6th day of October, 1866, in default of the payment of interest for about three years, the Trustees of the Internal Improvement Fund took into their possession the railroad of the Florida Railroad Company, and all the property of said company, and, after advertising the same, sold it at public auction at Gainesville, on the 1st day of November, 1866, subject to all the terms and conditions of the act of 1855, for the sum of three hundred and twenty-three thousand four hundred dollars ($323,400), to Edward N. Dickerson and associates.

That the Trustees of the Internal Improvement Fund decided to purchase the outstanding bonds of said company with the proceeds of said sale, and did purchase eleven hundred and twenty-eight of said bonds, after which purchase there was left remaining of said purchase-money the sum of ninety-seven thousand eight hundred dollars ($97,800), which sum the said trustees resolved should be applied to the purchase of the remaining outstanding bonds, provided the holders thereof were willing to sell them at

the rate paid for the bonds which had been purchased. The appellee, the complainant below, refused to sell his bonds at such rate. He filed the bill herein in the Circuit Court for the Northern District of Florida on the 3d day of November, 1870. The court on the 16th day of December, 1871, found that two hundred and eleven thousand eight hundred and eighty-five $\frac{45}{100}$ dollars ($211,885.45) was due on interest coupons, and that the further sum of six thousand eight hundred and twenty-five dollars ($6,825) would fall due on the 1st day of March, 1872, and the like amount semi-annually thereafter on the 1st day of September and March of each year until the 1st day of March, 1891, amounting in the aggregate to two hundred and seventy-three thousand dollars ($273,000), when the principal, amounting to one hundred and ninety-five thousand dollars ($195,000), will also fall due. It was referred, December 29, 1876, to A. R. Meek, Esq., master—

First. To inquire and report what and by whom the necessary expenditures have been incurred in bringing the moneys already received in this case into court.

Second. To inquire and report what necessary expenditures have been made, and by whom, in protecting the landed and sinking fund from which this money has been and will be realized.

Third. To inquire and report what personal services have been rendered, and by whom rendered, in the above work, and the value of said services.

Fourth. To inquire and report what amount of the foregoing expenditures has been charged to the said Francis Vose by the receiver of this case, instead of being paid out of the common fund in his hand. (Folio 711.)

The master reports as necessary expenditures made by the petitioner in this cause various items amounting in the aggregate to $34,192.62; certain expenditures in a suit in the Supreme Court of the State of New York, and in procuring testimony to set aside illegal conveyances and to

expose frauds in the management of the lands, &c., amounting to $19,745.68, and for services rendered by the petitioner between the years 1866 and 1876, both inclusive, in various "Florida suits" in Florida and elsewhere, $25,000 principal and $9,625 interest.

The master also reports that $5,000 of the foregoing expenditures, which ought to have been paid out of the general fund, had been charged to Francis Vose by the receiver. The aggregate sum reported is $93,941.65 principal and $39,429.46 interest. (Folios 716 to 722.)

On the 15th day of February, 1878, an allowance for costs and expenditures was made by the court in favor of the complainant, to be paid out of the fund, amounting to twenty-seven thousand eight hundred and twenty-five $\frac{34}{100}$ dollars ($27,825.34) principal, and five thousand eight hundred and sixty-two $\frac{46}{100}$ dollars ($5,862.46) interest; (folio 836;) and on the 23d day of December, 1879, an additional allowance for costs and expenditures was made by the court in favor of the complainant, to be paid also out of the fund, amounting to sixty thousand one hundred and thirty-four $\frac{96}{100}$ dollars ($60,134.96), making an aggregate allowance for costs and disbursements of ninety-three thousand eight hundred and twenty-two $\frac{76}{100}$ dollars ($93,822.76), and the Trustees of the Internal Improvement Fund, through their attorneys, duly took an appeal to this court. (Folio 928.)

Exceptions were duly taken to the order of the court and the proceedings (folio 763) and reports of the master. (Folios 726, 764, 840 to 847, and 929.)

Assignments of Error.

The appellants assign as error the following:

1. The decretal order of December 29, 1876, referring the petition of the appellee, the complainant below, for an allowance out of the funds in the hands of the receiver,

to a master to inquire and report as set forth in said decretal order.

2. The proceedings before said master under said decretal order.

3. The report of the said master.

4. The order of the court affirming said report.

5. The decretal order of the court directing the receiver, A. Doggett, Esq., to pay $27,825.34 principal, and $5,862.46 interest, to the appellee, the complainant below, through the solicitors of record; and

6. So much of the decree of the court of December 23, 1879, as made an additional allowance of $60,134.96, with interest thereon from the date of the filing of the report of the master, to the complainant below, to be paid out of the funds in court, and directed its payment by the receiver, Aristides Doggett, Esq.

Points.

The right to costs is created by statute and wholly depends upon it, and does not become fixed until the termination of the suit. At common law neither party recovered costs against the other. But before the enactment of any statute on the subject, although costs were not given to either party, yet if the plaintiff did not prevail in his action he was amerced for his false claim, which sum went to the king, and if he did prevail then the defendant was likewise amerced for his unjust detention of the plaintiff's right; but no indemnity was allowed to either party for the costs to which he had been subjected. (3 Blackstone, 399; Parsons on Costs., 1.)

Under any system of proceedings the recovery of costs is a statutory right. By way of indemnity for his expenses it has been thought fit to allow the prevailing party to recover, in addition to his debt or damages, cer-

tain prescribed allowances. (Rooney *v.* Second Avenue Railroad Company, 18 N. Y., 369.)

In an action at common law no items of expense are recoverable as costs except those enumerated in the statute. (Parker *v.* Bigelow, 1 Fisher, 285.)

At common law no costs were allowed to either party before the statute of Gloucester. (6 Ed. I, c. 1.) Under the provisions of that statute every court of common law has an established system of costs, which are allowed to the successful party by way of amends for his expense and trouble in prosecuting his suit. It is true, no doubt, and is especially so in this country, (where the legislatures of the different States have so much reduced attorneys' fee-bills, and refused to allow the *honorarium* paid to counsel to be exacted from the losing party,) that the legal taxed costs are far below the real expenses incurred by the litigant; *yet it is all the law allows as expensa litis.* (Day *v.* Woodworth, 13 How., 372.)

The motion in the case of Abell *v.* Screech, 10 Vesey's Ch. R., 355, was first heard December 14, 1804. Lord Eldon was chancellor and Sir William Grant master of the rolls, and the case is reported as follows:

"Upon a bill of creditors, on behalf of themselves and others, against the administratrix, after the usual decree, a motion was made by a creditor that it be referred to the master to tax his cost incurred in proving a sum of £427 3s 9d reported due to him from the intestate; and that what may be reported due on account of these costs may be paid out of the cash in the name of the accountant-general in trust in the cause. This motion had been made some time before, when the lord chancellor thought it reasonable; but, having doubt as to the practice, directed search for precedents.

"*The Lord Chancellor.*—This difficulty for the precedent of 1776 is, that if any creditors are to be allowed their costs, it must of necessity follow that all should be allowed their costs. That case arose upon the distribution of a great nobleman's estate (the Earl of Fairfax), and, I be-

lieve, some feelings of generosity prevailed in that instance. Upon what ground can it be done in one case unless there is some special direction in the will or deed creating the trust? If a creditor takes out administration, in order to support the suit, that the suit of the creditor might go on, I have known it allowed in that instance; *but that is not a creditor*. I will speak to the master of the rolls upon it.

"The motion was again made, when the lord chancellor said: 'The leaning of the court now is to give the plaintiff his costs, so far as they can, provided there are assets. But the general proposition is, that an executor does not pay costs, rather than that he does. That was much discussed in the Court of Common Pleas in the year 1789 or 1790. When this motion was first made, it struck me as of great consequence *and much novelty*; for the course of the court in the administration of assets is to compel all creditors to come before it; and the executor could not be safe unless this court would prevent their proceeding at law. This is an application, not for costs according to the ordinary course of the court, but upon this ground: that there has been more than usual difficulty in proving the debt in the master's office. It struck me, that if this application is to be sustained upon that ground, it must be very familiar, and, if not authorized by precedent, the court would be called upon in most cases to determine whether there is not so much difficulty in establishing the debt of each particular creditor, that it would be fit to distinguish his case; and to lay down one rule for one class of creditors and a different rule for another class. The cases that have been produced are only one, in 1776, that has not been followed, and another, lately, in which the point was not particularly discussed. I could not induce myself, without the sanction of the master of the rolls, to establish this practice, and the inclination of my mind is that it is too dangerous.'

"*The Master of the Rolls.*—'Every creditor coming in before the master incurs some expense; yet it is admitted not to be of course, but that a special application to the court is necessary to warrant the master to tax the cost of the creditor; and therefore the degree of expense will come into discussion in each case. In that there would be much inconvenience, and a great deal of difficulty, which

ought to be very well considered before such an application is granted.' No order was made."

Chancellor Kent, in Mason *v.* Codwise, 6 Johnson's Chancery Reports, 297, says:

"A creditor who comes in under the general decree for creditors to come in and prove their debts before the master is permitted to do so, on contributing to the plaintiff his proportion of the expenses of the suit, and is entitled to have his necessary costs of proving his debt taxed on the fund; but where he does not prove in season, he must pay his own costs; but where the principal part of the expense of proving his debt arises from the opposition of the original parties to the suit, he will not be ordered to bear the whole expense; as, where the greater part of the expense was the master's bill, caused by unreasonable opposition made to the proofs by the other parties, that expense was directed to be paid out of the fund, *under the special circumstances of the case.* If the master's bill be paid out of the fund, and the residue of the creditors' costs be borne by himself, it will be doing justice in this case, and leave the burden of the litigation before the master to fall upon all the parties concerned in it, and the residue of the costs to fall upon the creditor who was so tardy in presenting his claim, and who came in without the risk of contribution to the general costs of the suit.

"I wish it to be understood that this case is decided upon the facts peculiar to it."

It may be said that costs in equity are in the discretion of the court. But if this be so, this discretion is a sound one, to be exercised upon principle, and with reference to the general rules of practice. (2 Story R., 554.)

It is a settled rule in this court never to allow counsel on either side to be paid out of the fund in dispute. (Hanenstein *v.* Lynham, 100 U. S. R., 483.)

The decree of the District Court in the Neustra Señora de Ragla case, 17 Wall., 29, included the sum of $5,000 for counsel fees. This court say:

"We think that the amount was greatly excessive, and the allowance of counsel fees wholly unwarranted."

Counsel fees cannot be included in the verdict, and an instruction which directed the jury to award to the plaintiff "such sums as they should find to be required to remunerate him for the loss sustained by the wrongful act of the defendants, *and to reimburse him for all such expenditures as have been necessarily incurred by him in order to establish his rights*," was held to be erroneous as too broad and vague, and as tending to lead the jury to suppose that it was their duty to allow *counsel fees, and perhaps other charges and expenditures equally inadmissible.* (Philp *et al. v.* Nock, 17 Wall., 460.)

In the case of National Bank *v.* Whitney, 103 U. S. R., 104, this court say:

"The petition of McCormick to be allowed costs out of the fund in court must, according to the usual practice of the court in such cases, be denied. His costs are chargeable against the bank which contested his right to be paid out of the proceeds in court. If paid out of the fund they would reduce by their amount the moneys properly applicable to the indebtedness of Whitney."

Again, in Parks *v.* Booth, 102 U. S. R., 106, this court say:

"Costs were properly allowed, but the court is of the opinion that the complainant was not entitled to an allowance for any expenses beyond the taxable costs. * * Expenses to the amount of $627.20, including counsel fees, were allowed to the complainant beyond the taxable costs, which, together with the entire interest allowed, must be deducted from the decree."

The principle, so far as counsel fees in this case are concerned, has been settled by this court in the case of Oelrichs *v.* Spain, 15 Wall., 211. The learned justice who delivered the opinion of the court reviewed the American

"waste and spoliation" up to the time of the filing of Mr. Doggett's report.

With respect to the second item, that "moneys to the amount of one hundred thousand dollars, lying at the time either in Florida or New York, have also been rescued from waste and spoliation."

It will be remembered that on the 1st day of November, 1866, the Florida Railroad was sold to Edward N. Dickerson and his associates for the sum of $323,400; that the trustees purchased outstanding bonds of the company at twenty per cent. of their face value with the greater portion of this money, but the complainant below, and others, holders of a few of the outstanding bonds, refusing to sell their bonds at that price, there was left in the hands of the trustees a balance of $97,800. This balance was deposited by the trustees with Moses Taylor, in the city of New York. I am quite sure this court will be slow to believe that money in the hands of Mr. Taylor was liable to "waste and spoliation." This is the one hundred thousand dollars which the appellee "rescued from waste and spoliation." (Folios 12 and 13.)

With respect to the third item. It appears from the testimony of Edwin A. Studwell (folio 401) that by the contract of purchase the Florida Improvement Company was to pay ten cents an acre for the lands purchased. In addition the company was to send a settler for every three hundred and twenty acres so purchased. If the company should fail in furnishing such settler, then it was to pay fifty cents an acre for all lands on which failure was made in putting settlers. The deeds for about one hundred thousand acres of land were delivered to the company, and the company, or the individual members thereof, gave bond for one hundred thousand dollars that the contract should be carried out as to that one hundred thousand acres.

The complainant could have had a fair settlement at any time with the trustees. This fact appears from the answer

of the trustees, (folios 232 and 233,) where it is stated that they had endeavored to effect a settlement with him upon what they believed was a fair and just basis, but that the complainant refused to accede to any of their propositions for settlement, *and especially to take lands for his coupons*, when he well knew that this was all they had to give him. The trustees say in their said answer that they were then willing to take the past-due coupons of said complainant in payment for the lands belonging to said fund from time to time as the said complainant might desire to invest them in lands, or they were willing to sell him at one time in a body and at reasonable prices, having due regard to the interests of others who had a claim upon said lands, enough of said lands to pay and take up all the past-due coupons held by him, but they were not willing to surrender to him the whole fund without regard to the rights of others who had an equal claim upon it and without regard to the rights of the State of Florida, who was entitled to the remainder after the claims upon it were satisfied, and then take upon themselves the trouble, expense, and annoyance of administering the fund for his especial benefit.

There is nothing to show that a rescission of these contracts resulted beneficially to the fund. It is a matter of current history that the trustees have recently sold four millions of acres of land at twenty-five cents per acre.

With respect to the fourth item, there is not sufficient stated on the record to show what the truth is with respect thereto. But in view of the fact that Aristides Doggett, Esq., was appointed by the court master, &c., "to call for and audit all coupons" held by persons asserting a lien for the payment of the same against the Internal Improvement Fund, it is a reasonable and proper presumption that he was capable of discharging that duty, and that whatever coupons were rejected we are indebted to him for it.

I will not tax the court with a review of the various items set forth in the complainant's account. None of

them come within the rule, unless they are No. 22, A. Doggett, $485.46; No. 23, S. Conant, U. S. marshal, $327.96; No. 25, J. Townsend, clerk, $305.85; and No. 38, Philip Walter, clerk, $115.60; total, $1,234.87. It is possible item No. 24, Hugh A. Corley, $1,155.67, is allowable. Items Nos. 1, 12, 17, 18, 28, 29, and 30, amounting in the aggregate to $27,080.28, are for counsel fees. Item No. 39, J. H. Mercer, $6,928.16, is for "services from September 16, 1871, to May, 1873," (folio 751,) but by whose authority he was employed does not appear, unless it was by authority of the complainant.

Item No. 41, amounting to $15,003.35, is the expense account of the complainant, and item No. 42, amounting to $34,625.00, is for salary, and the interest thereon, of the complainant for ten years, at $2,500 per annum.

I do not know that a precedent for these last three items can be found in the books. I have been unable to find one, after the most careful search. There are cases where a creditor, who sues, not only for himself, but for all others similarly situated who will come in and make themselves parties and agree to contribute their proportion of the expenses of the litigation, in which the necessary expenses of proving the debts may be taxed on the fund. These are cases where the fund is insufficient to pay the debts, and the charge upon the fund is in the nature of a contribution by each creditor in proportion to his debt, the effect being simply to reduce his *pro rata* of the fund to the extent of his *pro rata* of the expenses of the litigation, so that, after all, the charge is in reality paid by the creditor. But where the fund is more than sufficient to discharge the debts, there cannot be such a thing as an allowance for costs and expenses beyond that prescribed by law; or beyond a sound discretion, exercised upon principle and with reference to the general rules of practice. To employ a party to collect his own debt, when the fund upon which it is a lien is ample to discharge it, at a remunerative salary, and

require the defendant to pay that salary and the expenses of the party, as well as of his counsel and private secretary, is something until now unheard of, and is wholly unwarranted.

It will be observed, too, that the court appointed a receiver, a master, and several agents, to take charge of the fund and administer it while it was in the custody of the court, so that there could have been no necessity for the services of the complainant.

C. W. JONES,
Of Counsel.

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C. W. JONES,
Of Counsel.

SUPREME COURT U.S.
FILED
MAR 13 1882
JAMES H. McKENNEY

No 601

IN THE

Supreme Court of the United States.

FRANCIS VOSE

vs.

TRUSTEES INTERNAL IMPROVEMENT FUND OF FLORIDA, ET AL. } In Equity.

Appellant.

Charles H. Greenough administrator of Francis Vose deceased

Appellee.

Statement and Brief of Appellee.

This action was instituted on the 3d day of November, 1870, in the United States Circuit Court for the Northern District of Florida.

Complainant in his bill sets forth that by the terms of an act, approved by the governor of the State of Florida on the 6th day of January, 1855, certain lands and proceeds from sales of the same were set apart and declared a distinct and separate fund, to be called the Internal Improvement Fund of the State of Florida, to be strictly applied according to the provisions of said act, and for the purpose of assuring such application the said lands and the funds arising from the sales thereof were vested in five trustees, to wit, the governor, the comptroller, the treasurer, attorney-general, and the register of public lands of the State of Florida, and their successors in office, to hold the same in trust for the purposes therein provided.

The complainant alleged in substance that the fund thus created by said act became pledged by operation of said act to secure certain bonds which might thereafter be issued by certain railroad corporations permitted by said act to avail themselves of its provisions; that the Florida Railroad Company did, as the terms of said act authorized, issue its coupon bonds, payable in 1891, and the payment thereof became secured, principal and interest, by said fund; that complainant was for value the owner and holder of 195 of said bonds of said Florida Railroad Company, amounting to $195,000 with interest thereon, due from and after the year 1860, said bonds being of the denomination of $1,000 each, and bearing interest at the rate of seven per cent. per annum. Complainant charged in his bill that the trustees who had controlled said fund had mismanaged and wasted the same and illegally disposed of the lands composing the fund, and in many illegal and fraudulent ways thereby impaired the security to which he was entitled to insure the payment of said bonds and coupons. Complainant prayed the court to allow his claim and charge the fund with the payment thereof and to require the trustees and others who had intermeddled with said fund to account therefor and refrain from further waste thereof.

The defendants to said bill of complaint made answer, and in due course of time the court, after several years of litigation, decreed, as appears on pages 135, 186, 187 of Record that there is due to the complainant, Francis Vose by the trustees of the Internal Improvement Fund of Florida the sum of two hundred and eleven thousand eight hundred and eighty-five dollars and forty-five cents upon the past-due coupons of one hundred and ninety-five bonds of the Florida Railroad Company, and that the further sum of six thousand eight hundred and twenty-five dollars will fall due on the 1st day of March, 1872 and semi-annually thereafter on the 1st days of September and March until the 1st day of March, 1891, making an aggregate of two hundred and seventy-

three thousand dollars when the bonds themselves (one hundred and ninety-five thousand dollars) will also fall due.

It was further ordered in said decree, and as apart thereof, that the trustees make provision for the payment of the amounts so found to be due the said claimant, and the court referred the case to a master in chancery to take an account of the fund and the outstanding claims against it; the said master being ordered, by the court and as apart of the original and modified decrees in complainants favor, to audit all coupons held by persons asserting a lien for the payment of the same against the said internal improvement fund—the said master to give due notice to all parties in interest of the time and place when lists of coupons, which may be submitted to him, shall be open to investigation, &c., &c., and to report his decision to the court.

The court subsequently, for the purpose of producing from the lands of the Internal Improvement Fund of Florida, the amount of money necessary to pay the indebtedness established by the former decree as having a lien upon said fund, appointed certain agents for the sale of the land of said improvement fund, and ordered them to pay the proceeds thereof to the master appointed as aforesaid.

And from time to time thereafter the court made such orders and decrees as were necessary to reclaim said fund and to protect and disburse the same. During the progress of the said course, to wit, on the 17th day of May, 1875, the complainant filed his petition in court, asking for an allowance out of the said fund, alleging in said petition that his original action was brought to restrain the waste and unlawful disposal of the money and the lands constituting what is known as the Internal Improvement Fund of the State of Florida, and was commenced for his benefit and on behalf of all others who should come in and make themselves parties to the suit; that said suit and the proceeding growing out of the same have been continued from the commencement thereof until the present time, a receiver has been appointed, and a

decree has been obtained for the sale of the land referred to in complainants bill, for the purpose of paying the past-due interest upon certain bonds held by this complainant and others, and secured by mortgage on the said land. Said petition contained in full the reasons why an allowance should be made to complainant, all of which appear on pages 175 and 176 of the Record in this action.

This petition was by the court referred to a master to take an account of the expenses of complainant, (see Record, pages 205–6,) which, being considered by said master, was reported upon favorably as to part of the items of complainant's accounts, upon which the court rendered judgment (see Record, page 285) for complainant in the sum and amount of $27,835.34.

And by said decree allowing complainant said sum it was further ordered (p. 286 of Record) that all other items in the bill of particulars of complainant not allowed be referred back to a master, that further testimony be taken in regard to the same under the original order of reference which was to that end continued in full force; and it was ordered that J. H. Durkee be appointed master under this submission; whereupon, after considering the testimony and all questions referred to him, the said referee, Durkee, made his report, upon which the court ordered adjudged and decreed that the following items, &c., to the amount of $60,134.96, in addition to the allowances made and paid under the previous orders of this court, be awarded complainant, and that he have judgment therefore. From the order allowing the $60,134.96 appellants have brought the case to this court by appeal. (Record, 316.)

In the original order of the court referring the petition of complainant, Vose, for allowance to A. R. Meek, master in chancery, he was required to report what and by whom the necessary expenditures have been incurred in bringing the moneys already received in this case into court.

To enquire and report what necessary expenditures have been made and by whom, in protecting the landed and sinking fund from which this money has been and will be realized.

To enquire and report what personal services have been and by whom rendered in the above work, and the value of said services.

To enquire and report what amount of the foregoing expenses has been charged to said Francis Vose by the receiver of this case instead of being paid out of the common fund in his hand.

And it was ordered that this order be open to all interested.

After hearing the matter, the master in chancery reported as follows:

I find and report, among other things, (p. 229 Record) that the moneys which have already been received, whether upon account of the internal improvement fund or of the sinking fund, have been brought into court at the instance and the suit, and by the sole efforts of Francis Vose, the petitioner, through himself, his solicitors, and his agents, and by the instrumentality more directly and especially of his proceedings in equity against the trustees, which are made evidence in this case I further find and report that the following expenditures have been made by the petitioner in the said cause, and that they were necessary expenditures, amounting, in the aggregate, to $133,371.11.

This report, coming on for hearing, was confirmed to the extent of $27,835.34, (page 285,) and it was ordered (page 286) that all other parts of the report be referred back for further testimony, and, by agreement, J. H. Durkee, Esq., was substituted as master for Mr. Meek.

J. H. Durkee reported in favor of allowing items to the amount of $60,134.96, which amount was allowed and confirmed by the court, (see page 315, Record,) whereupon defendants below appealed.

POINTS AND AUTHORITIES.

Only that part of the case which embraces the allowances made to complainant for costs, expenses and attorneys fees is brought to this court by appeal. This fragment of the case cannot be appealed in this detached form. If it come here at all it must come as a part of the final decree.

The Palmyra, 10 Wheat., 502.

Cannot be appealed piecemeal.

2 Danl., ch., pr. 1,467.

This appeal is not from a final decree of the circuit court, and should therefore be dismissed. It is merely a decree for costs. A decree cannot be said to be final until the court has completed its adjudication of the cause.

Green *vs.* Fisk, 103, U. S., 519.

By appealing from part of the decree the remainder is admitted to be correct.

2 Danl., ch., pr. 1,467.

Appellant cannot attack that part of the decree from which he has not appealed.

2 Danl., ch., pr. 1,489, note 3.

The costs allowed in this case were not fixed by law or limited, but were allowed in the exercise of a sound discretion of the court. A matter within the discretion of the lower lower court will not be examined into by this court.

Sheets *vs.* Selden, 7 Wallace, 421.

Counter *vs.* American Oceon. Ins. Co., 3 Pet., 307.

2 Perry on Trusts, sec. 892.

Taylor *vs.* Root, 48 N. Y., 687.

No appeal lies from a mere decree respecting costs.

Counter *vs.* American Oceon. Ins. Co., 3 Pet., 307.

Elastic Fabric Co. *vs.* Smith, 100, U. S., 110.

Green *vs.* Crockett.

2 Deveroux & Battles, (N. C.,) Equity, 394.

No party is entitled to costs except by special order of the court.

2 Perry on Trusts, 892.

Krutz *vs.* Frost, 55 Barb., 474.

And courts of equity have unlimited discretion over costs in proceedings before them.

2 Perry on Trusts, sec. 893.

The same rule prevails in admiralty. An allowance or non-allowance of costs is in the discretion of the court, and not appealable.

Taylor *vs.* Woods.

3 Woods, c. Ct., 146.

On bills by creditors, some of whom have liens on the estate, and others by mortgage for distribution of their debtor's estate, the fund will be first charged with costs of the proceedings.

Scriba *vs.* Deans.

1 Brockenbrough, Rep., 175.

In the above case commissioners were appointed to compute all costs "expended" by plaintiffs, respectively.

Ibid.

It is within the discretion of a court of equity to charge attorney's fees as costs in a case where the fund is in the custody of the court, and such fees have been incurred, in the opinion of the court, to protect the fund.

Lyon *vs.* Fascue, 60 Ala., 484.

3 Daniel Ch. Prac., 1,683.

3 Daniel Ch. Prac., 1,585.

Turner *vs.* Turner, 2 R. and M., 687.

Also, same report, p. 32.

Daniel Ch. Prac., 1,567.

2 Daniel Ch. Prac., p. 1,435.

There is a distinction with regard to the principle upon which costs are taxed in equity. This distinction is marked by the terms of "costs as between party and party," and "costs as between solicitor and client." The court, in the latter case, permitting a larger proportion of actual expenditures to parties holding particular characters than it allows in the former case. No definite rules can be laid down with respect to the difference between the costs allowed upon one principle of taxation and those allowed upon the other. * * * In taxations between solicitor and client the party will be allowed as many of the charges which he would have been compelled to pay his own solicitor, as being costs of suit, as fair justice to the other party will permit.

Frost *vs.* Belmont, 8 Allen, 164.

2 Danl. Ch. Prac., p. 1,434.

Where the suit is instituted for a general administration of assets, so that the whole estate comes before the court, the costs are always provided and constituted a first charge on the fund. (Dan. Ch. Prac., 1,422, 1,423.) It cannot be claimed that the petition of complainant to be allowed his costs, counsel fees, and personal expenses, &c., (see Record, 175,) and the order of the court referring the same to the master in chancery (page 228 of Record) were not sufficiently explicit to indicate and involve the taxation of costs between solicitor and client.

The court having jurisdiction to tax costs between solicitor and client, and having referred the petition to a master to find said costs, this court will not review the action of the court below or that of the master upon the quantum of costs.

2 Dan. Ch., Prac., 1,462 and 1,466.

The right to appeal for costs alone depends upon exceptional facts. The costs must be either the subjects of relief or fixed by law to warrant an appeal.

If they may be allowed or not in the discretion of the court or the amount is not fixed by law no appeal lies on an award for costs.

2 Danl. Ch. Prac., 1,466.

Travis *vs.* Waters, 1 John. Ch., 48.

Randolph *vs.* Rosser, 7 Porter, 249.

ALLOWANCES.

It appears from the decree, on page 179 of Record, that the trustees misapplied the funds belonging to said trust; fraudulently misappropriated the same; fraudulently sold the land; donated part thereof for nominal prices, and entered into corrupt agreements concerning the same. The fund was taken possession of by the court in consequence of bad faith on the part of the trustees. No part of these orders or decrees are appealed from and are therefore by appellant admitted to be correct. (Authorities above cited.)

The vigilance of the complainant reclaimed the fund, and rescued it from the illegal and fraudulent disposition made of it by the trustees. This conclusion rests upon the findings (unappealed from) of the court and master to whom the matter was referred.

The appellant claims that in such a case a court of equity has no power to make to complainant a suitable allowance for his services in saving the fund. No beneficiary objects, but the trustees, themselves in fault, alone deny the power of the court to deal with the trust fund as it did.

The *cestuy que trust* may call the trustees to an account but can only do so in a court of chancery.

Perry on Trusts, sec. 10.

This court has the amplest powers over the subject-matter of the trust when once it takes possession thereof. Trustees

themselves may be allowed for their time and services in the management of trust property at a distance.

Perry on Trusts, sec. 905.

Trustees have an inherent equitable right to be reimbursed all expenses which they reasonably and properly incur in the execution of the trusts.

Perry on Trusts, sec. 910.

This includes all tra velling expenses and attorney's fees.

Ibid.

Allowances for legal expenses and costs are always within the discretion of the court.

Ibid.

Trustees may employ necessary assistance in executing the trust, and pay them; thus he may employ agents, collectors, accountants and other persons properly employed in similar affairs.

Perry on Trusts, Sec. 912.

In most of the States, by statue, the equitable right of a trustee to an allowance is recognized and established.

In Vermont a gross sum in addition to expenses is allowed.

Evarts *vs.* Nason, 11 Vt., 122.

In Connecticut compensation is within the discretion of the court.

Clark *vs.* Platt, 30 Conn., 282.

So in Massachusetts, and may be varied to meet the requirements of each case.

Blake *vs.* Pegram, 101 Mass., 592.

Equity will follow the law, and where the justice of an allowance to a faithful trustee finds expression, in all the statute law of the country, a court of equity will conform its practice thereto.

In this case the trustees were faithless, and in such cases their compensation becomes forfeited.

Moore *vs.* Zabriskie, 3 Green, 51.

did what the trustees ought to have done and

In this case the complainant for himself and others, by his *sole efforts*, as established by the decree of the court and report of the master, restored to the fund large sums which had been diverted therefrom by the misconduct of the trustees; travelled from State to State to do so; spent his time and money therefor, but the trustees who might have been compensated had they done the same service, now say that the complainant shall have nothing for his personal services and expenses because it would be inequitable to allow it in favor of complainant against a fund in which the trustees have no interest whatever as against the beneficiaries.

The trustees have no standing in this court to object to such an allowance. In such a case as this, when all the beneficiaries assent, the trustees, as against the beneficiaries, are disinterested and cannot object or appeal.

The right of United States courts, in the exercise of their equity jurisdiction, to award costs, is unaffected by acts of Congress providing for the taxation of costs.

State of Penn. *vs.* Wheeling, &c., Bridge Co., 18 How., 460.

Equity jurisdiction involves the power to use the discretion of the court to award or refuse costs.

Ibid., p. 462.

The record in this case does not disclose the exact state of the fund, its actual value, or the amount proved or to be proved as a lien against it. The main case is still pending in the court of original jurisdiction. This appeal is limited in its effect to a revision of the action of the circuit court in taxing costs, and therefore ought not to prevail.

It does not appear from the record that any beneficiary complains of the taxation of costs in this action. Appel-

lee's services, for which allowance was made, were for the benefit of all.

It is claimed by appellant that statutory costs only can be allowed. This cannot be so where the court takes into its charge the fund to be administered. Wherever a court of equity has the power to appoint receiver, commissioner, or agent of any kind to exert its jurisdiction, it has the power, by invincible implication, to compensate that agency, though there be no statute regulating the compensation. It is upon this principle that attorney's fees are allowable. The fund is also chargeable with all reasonable expenses in the execution of the trust.

Cowdery *vs.* Galveston R.R. Co., 93 U. S., 355.

C. D. WILLARD,
JEFF CHANDLER,
Attorneys for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, APPELLANTS,

vs.

CHARLES P. GREENOUGH, ADMINISTRATOR, &c., OF FRANCIS VOSE, APPELLEE.

No. 601.

BRIEF FOR APPELLANTS, IN REPLY.

Is this appeal from a final decree? The highest test of a final decree seems to be whether there is an ascertainment of the amount due. The decree rendered herein on the 16th day of December, 1871, beginning at folio 575, orders and decrees the amount then due the complainant; also the amounts that would thereafter become due and the dates at which each would become due. The whole matter had been referred previously to a master in chancery (folio 568), to wit, on the 7th day of December, 1871. There was a further decree rendered on the 18th day of December, 1872, (folio 590.) There are also two other decrees, one beginning at folio 595 and the other at folio 600.

The Trustees of the Internal Improvement Fund took an appeal on the 10th day of January, 1873. (folio 456.)

These decrees award all the relief prayed for by the complainant (folios 46 to 49), and settle the whole law of the case. They leave no question of right between the parties open for future adjudication. (Phillip's Practice, 83–85; Forgay *v.* Conrad, 6 Howard, 201; United States *v.* Babbitt, 1 Black, 54.)

A decree which adjudges a certain sum of money to be due from an administrator to each of the distributees of his intestate's estate, and awards execution to collect it, is a final decree. (Stoval *v.* Banks, 10 Wall., 583.)

In foreclosure suits it has been held that a decree which settles all the rights of the parties but leaves the sale to be made and the proceeds to be paid over, is final for the purposes of an appeal. (Green *v.* Fisk, 103 U. S., 520.)

A decree ordering an injunction previously granted to restrain a sale under a deed of trust to be dissolved, and directing a sale according to the deed of trust and the bringing of the proceeds into court has been held to be a final decree. (Railroad Co. *v.* Bradleys, 7 Wall., 575.)

After the final decree was rendered herein the court referred the matter, December 29, 1879, to a master to enquire and report upon certain matter of costs and expenses. (Folio 711.) The master took testimony and made his report, which was confirmed by the court. Exceptions were duly taken at the time at each stage of the proceedings. The court awarded the complainant the large sum of $93,822.76 as costs and expenses, and the defendants below prosecuted their appeal. The case was advanced upon the calendar by this court at the instance of the State of Florida, a party in interest, by whom in realty the decree, if it is affirmed, will have to be paid. She is the "beneficiary" and complains of this excessive taxation of costs to be paid out of a fund belonging to her.

It would be a great hardship if there was no power

vested in this court to review such a decree as the one complained of here.

It is frequently said that no appeal lies from a mere decree respecting costs, and the case of Canter *v.* the American and Ocean Insurance Companies, (3 Peters, 357,) is cited to support the declaration. That was a case which was before this court upon a second appeal. No damages had been awarded to Canter by the original decree, and he took no cross appeal. When the case went back for further proceedings the court below awarded damages. This court, on the second appeal, held that what they had established by their decree on the first appeal could not be departed from by the lower court. This left nothing open but the question of costs, and Mr. Justice Story in delivering the opinion of the court, said:

"As to costs and expenses *we perceive no error in the allowance of them in the Circuit Court.* They are not matters positively limited by law, but are allowed in the exercise of a sound discretion of the court. And, besides, it may be added that no appeal lies from a mere decree respecting cost and expenses."

But suppose the case at bar had been before the court at that time, with everything which has been done by the court below open for review, can there be any doubt but what this court would have looked into the question of costs and expenses?

The same learned justice says in another case already cited, that while costs are allowed in the discretion of a court of equity, "this discretion is a sound one, to be exercised upon principle, and with reference to the general rules of practice."

Where a bill has been filed for the general benefit of creditors and legatees, *and the estate has proved insufficient*, the court has been in the habit of late years of giving the plaintiff his costs of the suit out of the fund realized by his exertions as between solicitor and client.

But it is only where the fund is insufficient that the plaintiff in a suit of this description will be entitled to have his costs taxed in so favorable a manner. Where the fund is sufficient to pay all the debts and leave a surplus for the residuary legatee, the plaintiff will only have his costs as between party and party.

Where, however, the fund had been realized by the diligence of the plaintiff, and the assets were more than sufficient for the payment of the debts, Lord Langdale, M. R., made an order by which it was directed that the plaintiff's costs, as between party and party, should be paid out of the fund, and that his extra costs should be paid *pro rata by all the creditors who partook of the benefits of the suit.* 3 Daniel's Ch., Pr. and Pl. 1584.

Where in consequence of the misconduct of the trustee a suit becomes necessary, the court may compel the trustee to pay the costs of suit out of his own pocket. And simple nonfeasance, where it is productive of mischief to the trust estate, will be sufficient to induce the court to visit a trustee with costs. Ib., 1561.

It is admitted that where the fund is taken into its charge by the court, and a receiver is appointed, a reasonable compensation may be allowed him out of the fund, but that is not this case by any means. And while there is a distinction with regard to costs marked by the terms of "costs as between party and party," and "costs as between solitor and client," there is no distinction which recognises costs to either party as compensation for *his* services in collecting his debt. The term "expenses of suit" has never been held to include such compensation; and it is "a settled rule of this court never to allow counsel on either side to be paid out of the fund in dispute"—that is to say, this court will not allow "costs as between solicitor and client" to be paid out of the fund in dispute.

C. W. JONES,
Of Counsel.

IN TH

Supreme Court of the United States.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

vs.

CHARLES H. GREENOUGH, ADMINISTRATOR OF FRANCIS VOSE.

No. 601.

APPELLEE'S ADDITIONAL BRIEF.

Inasmuch as something was said by members of the court, during the argument of this case, touching the effect of the statute regulating attorney's fees, I desire to suggest that the attorneys for appellant do not claim that this statute controls the taxation of costs in this action. They have made no such suggestion in their brief or argument.

This statute does not, in terms, apply to equity jurisdiction, especially to cases where the court has found all legal remedies inadequate, and has, itself, taken into its custody a trust fund, and is proceeding to administer it. It applies to legal controversies where the duties of an attorney are specific, and the extent of the labor of an attorney is, by the statute, foreseen. He gets certain fees for doing certain things; but when the court, in the exercise of its equity powers, which begin where legal remedies leave off, then the

labor of an attorney, in the domain of equity, cannot be foreseen, and is, therefore, left to the sound discretion of the court.

In the case of Blake *vs.* Pegram, 101 Mass., 592, cited in first brief, the statute fixed the compensation of trustees, yet, the court held that the power of a court of equity to make a suitable allowance was not controlled thereby. In the case of Cowdrey *vs.* Galveston R. R. Co., 93 U. S., 354, also cited, the statute was not considered in allowing the trustees $5,000 paid as a retainer to his counsel. The allowance was not there, nor was it in this case, made to the attorney but to one who had protected the fund. The statute contemplates cases where the attorney is himself applying for an allowance for doing certain specific acts which appertain to legal controversies only.

The statutes of the United States nowhere trammel the equity of jurisdiction of the federal courts by fixing rigid limitations upon the discretion of the court to award costs and make allowances where the court has *taken into its custody a trust fund to administer it.* If the court, in such case, employ attorneys to protect the fund, the court is left free to pay what, in its judgment, is adequate. No authorities have been cited by appellant against the power of the court to use its discretion concerning costs and allowances where the fund is *taken possession of by the court as in this case.* (*See cases cited in brief.*)

Where the court takes possession of railroads or insurance companies which have become insolvent and closes up the business thereof, employing attorneys, &c., therefor, it fixes such compensation as is proper, of which it is the exclusive judge, and from which allowances no appeal lies.

Crowls *vs.* Whitman, 10 Conn., 120.

2 Perry on Trusts, Sec. 893.

There are many cases in equity it is conceded where the above rule does not exist, but these are cases where the fund is not taken out of the hands of the litigants.

The rules for the taxation of costs in equity, as found in Desty's Federal Procedure, concede the discretion of the court over the matter, and distinguish them from taxation in law controversies.

It is highly inequitable for the State of Florida to oppose this claim. If Florida takes a beneficial interest in this fund then it has been largely benefited by complainant's. It stands before the court admitting that the fund has been redeemed by complainant, (the court having so found, and no appeal being taken from such finding,) and that its treasury has been enriched by his vigilance and efficiency. Yet it is unwilling to pay what is a reasonable compensation therefor.

We insist that the complainant in this case is entitled to the same allowances that the trustees would have been entitled to if they had done the same service, and that no appeal lies from the allowance of costs, and that there has been no final judgment.

C. D. WILLARD,
JEFF CHANDLER,
Attorneys for Appellee.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 245.

ASA JOHNSON AND THOMAS S. SANDFORD, APPELLANTS,

vs.

THE FLUSHING AND NORTH SIDE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 15, 1879.

	Original.	Print.
Defendant's Exhibit Mobile and Ohio Railroad contract, May 30, 1855	200	99
Fish-joint contract, June 6, 1855	202	100
Mobile and Ohio Railroad bolts	203	100
Winslow, John B	204	101
Henderson, Franklin	208	103
Ricker, R. E	210	105
Couper, Samuel	222	110
Gordon, John	232	115
Dobb, William H	238	118
Couper, Samuel, recalled	241	120
Defendant's Exhibit Agreement of October 10, 1835, for T rails for North Side and Flushing Railroad	244	121
Bill of Lading of October 17, 1836, Ship Isaac Hicks	246	122
Bill of Lading of August 20, 1836, Ship Kutusoff	247	123
A. & G. Ralston's Bill, October 15, 1836, and Receipt	250	125
Truesdell, Wheeler	251	125
Curtis, Charles A	254	127
Murphy, Robert	257	129
Curtis, Charles A., recalled	260	131
Wilkinson, Alfred	261	131
Harris, Daniel L	263	132
Parry, Charles T	267	134
Defendant's Exhibit Extract from Register of Locomotives, &c	283	141
Thompson, John	284	142
Hollingsworth, George	291	146
Hudson, William S	295	149
Swinburne, William	304	153
Cooke, John	311	157
Luttgens, Henry A	314	160
Hudson, William S., recalled	324	164
Renwick, E. S. (rebuttal)	330	167
Defendant's Exhibit Original Johnson Patent	390	199
Complainants' Exhibit No. 1, Reissue Johnson Patent	397	201
Johnson Deed No. 1	403	204
Johnson Deed No. 2	405	205
Crapser Deed to Johnson	408	207
Johnson's Application	412	208
Robinson Patent	433	219
Opinion	437	221
Order of substitution and consent	445	225
Decree of final hearing	447	226
Decree for judgment	449	227
Notice of appeal	451	227
Petition of appeal	453	228
Bond on appeal	471	232
Certificate	476	233
Citation and proof of service	477	234

1 The President of the United States of America to the Flushing an' North Side Railroad Company, greeting:

[L. S.] You are hereby commanded that you personally appear before the judge of the circuit court of the United States of America for the eastern district of New York, in equity, on the first Monday in June, A. D. 1872, wheresoever the court shall then be, to answer a bill of complaint exhibited against you in the said court by Asa Johnson and Thomas S. Sandford, and to do further and receive what the said court shall consider in that behalf, and this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Brooklyn, on the 7th day of May, in the year of our Lord one thousand eight hundred and seventy-two.

SAMUEL P. JONES, *Clerk.*

FREDERIC H. BETTS,
Complainant's Solicitor.

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of June, 1872, or the bill will be taken pro confesso against it.

SAMUEL T. JONES, *Clerk.*

FREDERIC H. BETTS,
Complainant's Solicitor.

2 (Indorsed:) U. S. circuit court, eastern district of New York. Asa Johnson and Thos. Sandford vs. The Flushing and North Side Railroad Company. Subpœna ad respondendum. Filed and entered June 3, 1872.

I certify that on the 12th day of May, 1872, in my district, I personally served the within subpœna on John J. Lock, the president of the Flushing and North Side Railroad Company, by showing to him the same with the seal of the court thereon and at the same time delivering to him a copy thereof.

S. B. HARLOW,
U. S. Marshal.

JUNE 3, 1872.

3 To the honorable the justices of the circuit court of the United States for the second circuit, within and for the eastern district of New York, in equity:

Asa Johnson and Thomas S. Sandford, both of the city of New York, county of New York, State of New York, citizens of the United States, bring this their bill of complaint against the Flushing and North Side Railroad Company, a corporation organized and doing business under the laws of the State of New York, and having their principal office for the transaction of business in the town of Flushing, county of Queens, State of New York.

And thereupon your orators complain and say that heretofore, and before the 19th of May, 1857, your orator the said Asa Johnson, then of Cairo, New York, being then a citizen of the United States, was the true, original, and first inventor or discoverer of a certain new and useful invention, to wit, an improvement in the mode of fastening sheet-iron on roofs, &c., and that the said invention was not known or used by others before invention or discovery thereof, and was not at the

time of the application for letters patent therefor in public use or on sale with the consent or allowance of your orator the said Johnson, as the inventor or discoverer thereof, contrary to the provisions of the statutes of the United States in such case made and provided.

That your orator the said Johnson made application in writing to the Commissioner of Patents of the United States for the granting of letters patent for said invention, and paid into the Treasury of
4 the United States the fees required by law, and then and there also duly complied in all other respects with all the necessary conditions and requirements of the statutes of the United States in such case made and provided, prior to the granting of the letters patent hereinafter mentioned.

That on the 19th day of May, 1857, letters patent of the United States, bearing date on that day, were issued to your orator the said Johnson, and to one William Higbie, and to one Henry Link, according to law, whereby there was granted to them and their heirs, executors, administrators, or assigns, for the term of fourteen years from the 19th day of May, 1857, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the invention or discovery aforesaid, a description whereof was given in the words of your orator the said Johnson, in the said schedule annexed to the said letters patent, and was made part of the same.

That the said letters patent were issued in the name of the United States of America, and were sealed with the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were numbered 17331, and were issued and delivered to your orator, the said Johnson.

That thereupon, after the issuing of the said letters patent as aforesaid, your orator the said Asa Johnson put the said invention into use. That all of the interest of the said Higbie and Link terminated and expired on or before the 19th day of May, 1871, upon the expiration of the original term of said letters patent.

That on the day of May, 1871, upon the application of your orator the said Johnson, and due proceedings had, and upon a compliance by him with all the provisions and requirements of the statutes in such case made and provided, said letters patent were duly extended for the further term of seven years from the 19th day of May, 1871.

5 And your orators further show to your honors that heretofore, on or about the 16th day of April, 1872, your orators the said Johnson and the said Thomas S. Sanford, his assignee hereinafter set forth, finding that the said patent which had been granted as aforesaid was inoperative by reason of a defective or insufficient specification, thereupon your orators so finding, and the said error having arisen by inadvertency, accident, and mistake, and without any fraudulent or deceptive intention on the part of your orators, or either of them, your orators surrendered their said patent to the Commissioners of Patents, according to the statutes of the United States in such case made and provided, and having amended the specification of claim in accordance with the decision of the said Commissioner in the premises, and having the fees prescribed by, and in all other things complied with, the statutes of the United States in such case made and provided, new letters patent of the United States for the same invention were, on the said 16th day of April, 1872, issued and delivered to your orators according to law, whereby there was granted to them for the then unexpired term of twenty-one years, from the 19th day of May, 1857, the full and ex-

clusive right and liberty of making, constructing, using, and vending to others to be used, the said invention or discovery of an improvement in mode of fastening sheet-iron on roofs, &c., a description whereof was given in the words of your orator, the said , in the schedule annexed to the said reissued letters patent.

That the said new letters patent were issued in the name of the United States, and were signed by the Acting Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were sealed with the seal of the Patent Office of the United States, and were numbered 4870, and were issued and delivered to your orators.

6 And your orators pray that said letters patent and the schedule annexed thereto, as aforesaid, may be deemed and taken as part of their bill, and to the originals of which, or a duly authenticated copy thereof, now in your orator's possession, and ready to be produced they crave leave to refer.

And your orators further show that on the 11th day of January, 1872, by assignment in writing duly signed, delivered, and recorded in the Patent Office, the said Johnson assigned a two-thirds interest in the said letters patent as heretofore set forth to your orator Thomas S. Sandford, who is now the owner thereof.

And your orators have, ever since the date of the said reissue, been and now are entitled to all the rights, interests and privileges thereby secured unto them in and to the said invention or discovery, in the said reissue particularly set forth, and are and ever since the date thereof have been entitled to the exclusive use of the said invention and improvement, within the limits aforesaid.

And your orators further show unto your honors that the said invention or discovery so patented aforesaid unto them is of very great utility, and that the same has been extensively introduced into public use, and that the public have generally acquiesced in your orator's exclusive right to the same; and your orators would, but for the wrongful acts of the said defendants and others acting in concert with , have made large gains, profits, and advantages from the manufacture, use, and sale of the said invention; and your orators would, but for the wrongful acts and doings of the said defendants and others acting in concert with them, now be enabled to use the said invention, to which they are entitled to the exclusive right as aforesaid, with profit and advantage, but that by the said wrongful acts and doings they are now prevented and hindered from so doing.

7 And your orators further show unto your honors, upon information and belief, that the said defendants, who are a corporation, well knowing the premises and the rights and privileges secured unto your orators, and in order to deprive them of the profits, benefits, and advantages which might and otherwise would have accrued to them, at Flushing, Long Island, and within the eastern district of New York, and without the license or permission of your orators or either of them, they, the said defendants, have, ever since the 16th day of April, 1872, unlawfully and wrongfully made or caused to be made, sold or caused to be sold, used or caused to be used, improved fastenings for rails and other metallic substances, each and all containing the said invention, discovery, improvements and combinations, consisting as therein and in the schedule set forth, of the exclusive right to which is secured to your orators, as hereinbefore set forth, and which said unlawful making, use and sale, by the defendants, as aforesaid, is a violation and infringement of your orators' exclusive rights and privileges, and that the said defendants have de-

rived and received, and are still deriving and receiving from such use great gain and profits, but to what amount your orators are ignorant and cannot set forth, but your orators pray that the defendants may be required to make a disclosure of all such gains and profits.

And your orators, in like manner, aver that the defendants, though requested to desist from such unlawful use, and to pay to your orators such gains and profits as the defendants have actually made, refuse so to do, by means whereof your orators are and have been greatly injured, and are now prevented from putting the said invention or discovery into successful operation, and are deprived and prevented from receiving the gains and profits to which they are lawfully entitled, from the exclusive rights and privileges so granted and secured to them as aforesaid, and which they would have derived and acquired, and would now derive and acquire, but for the said wrongful acts of the said defendants.

8

And your orators pray that the said defendants may be compelled by a decree of this honorable court to account for and pay over unto your orators all such gains and profits as have accrued or arisen to, or been earned or received by, the said defendants, and all such gains and profits as your orators would have received but for the said wrongful acts and doings of the said defendants, and all damages your orators have sustained thereby, and that this honorable court will assess the same, or cause them to be assessed, under its direction, and will increase the same, in its discretion, as provided by law.

And that the said defendants and their attorneys, solicitors, clerks, servants, agents and workmen may be perpetually enjoined and restrained by the decree of this court from directly or indirectly making, or causing to be made, using or causing to be used, or vending to others to be used, in any manner, any improved fastenings for rails and other metallic substances, containing or embodying the said invention granted by the said letters patent, as issued aforesaid, and from infringing upon or violating the said letters patent by the use or sale of the said invention in any way whatsoever. And that the said defendants may be decreed to pay the costs of this suit; and that your orators may have such other relief as the equity of the case may require, and as to your honors may seem meet.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may full, true, direct and perfect answer make, according to the best of their or their clerks', agents' or workmen's knowledge, remembrance, information and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were here repeated paragraph by paragraph, and they were thereto severally and specifically interrogated—

9

May it please your honors to grant to your orators a writ of subpœna ad respondendum, issuing out of and under the seal of this honorable court, directed to the said defendants, The Flushing and North Side Railroad, commanding them to be and appear and make answer unto this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem required by the principles of equity and good conscience.

May it also please your honors to grant unto your orators a provisional or preliminary injunction, issuing out of and under the seal of this honorable court, enjoining and restraining the defendants and their attorneys, solicitors, clerks, servants, workmen, and agents to the same

purport, tenor and effect hereinbefore prayed for in regard to said perpetual injunction.

And your orators will ever pray, &c.

Complainant's Solicitors.

FREDERIC H. BETTS,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this day of May, 1872, before me came Thomas S. Sandford, to me personally known, who, being by me duly sworn, did, each for himself, depose and say that he is one of the complainants in the foregoing bill of complaint named, and that he has read the said bill, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are
10 therein stated to be on information and belief, and as to those matters he believes it to be true.

THOMAS S. SANDFORD.

Sworn to before me this 6th day of May, 1872.
[L. S.] CHARLES SAYLES,
Notary Public, State of New York.

Filed May 7, 1872.

11 *Notice of appearance.*

U. S. circuit court, E. district of New York, in equity.

ASA JOHNSON AND THOS. S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Co.

SIR: Please take notice that the defendant appears in this action, and that we are retained as solicitors for said defendants therein.

New York, June 3, 1872.
Yours, &c.,

HINSDALE & SPRAGUE,
Sol'rs for Def't.

To SAMUEL T. JONES, *Clerk.*

Filed June 3, 1872.

12 *Rule—Entered June 3, 1872.*

U. S. circuit court, eastern district of New York.

ASA JOHNSON ET ANO.
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

On reading and filing the notice of appearance of Hinsdale and Sprague as solicitors for defendants in the above-entitled cause, and on their motion, it is ordered that the appearance of said solicitors herein be, and the same is hereby, entered.

Circuit court of the United States, eastern district of New York.

ASA JOHNSON ET AL.
vs.
THE FLUSHING & NORTH SIDE RAILROAD Company. } In equity.

The answer of the Flushing & North Side Railroad Company, respondent, to the bill of complaint of Asa Johnson and Thomas S. Sandford, complainants.

This respondent, saving and reserving to itself all right of exception to said bill of complaint, for answer thereunto says:

13 That, upon information and belief, it admits it to be true that on the 19th day of May, 1857, letters patent of the United States, numbered 17331, were issued to the complainant Asa Johnson, and to William Higbie and Henry Link, for an "improvement in fastening sheet-metal on roofs;" that the interest of the said Higbie and Link expired on the 19th day of May, 1871; that on the day of May, 1871, said letters patent were extended for the further term of seven years from the 19th day of May, A. D. 1871; that on the 11th day of January, A. D. 1872, said Asa Johnson assigned a two-thirds interest in said letters patent to the said Sandford; that the said Johnson and Sandford surrendered their letters patent, and obtained a reissue of the same, bearing date April 16, 1872, numbered 4870, and entitled for an "improvement for fastening sheet-metal to roofs."

But this respondent denies that said original letters patent were inoperative by reason of a defective or insufficient specification, as alleged, or that the same were lawfully surrendered, or that the said reissued letters patent were lawfully issued and delivered to the said complainants, or that the said Johnson was the original or first inventor of the improvements described and claimed therein, or that the complainants obtained any exclusive right or liberty by virtue of said letters patent.

And this respondent, upon information and belief, says that the "self-adjusting fastener" described in said letters patent, or a material and substantial part thereof, claimed in said letters patent as new, was, long before the alleged invention thereof by the said Johnson, in public use upon many railroads in the United States and Europe, and was then known to the following named persons, viz: To—

John B. Jervis, of Rome, New York, upon the New York Central Railroad, at Syracuse, N. Y.;

14 C. F. Hammond, of Chicago, Illinois, upon the Chicago, Burlington and Quincy Railroad, at said Chicago;

Wilson Eddy, of Springfield, Mass., upon the Western Railroad, now the Boston & Albany Railroad, at said Springfield;

William H. Russell, of West Springfield, Mass., upon the Western Railroad, at said Springfield;

Charles Paine, of Cleveland, Ohio, upon the Michigan Southern and Northern Indiana Railroad, at Elkhardt, Indiana;

John B. Winslow, of Boston, Mass., upon the Boston and Lowell Railroad, at said Boston;

E. A. Swasey, of Taunton, Mass., upon the Taunton Branch Railroad, at said Taunton;

A. F. Smith, of Norwich, Connecticut, upon the Hudson River Railroad, at Poughkeepsie, New York;

A. Stone, jr.. of Cleveland, Ohio, upon the Cleveland, Columbus and Cincinnati Railroad, at said Cleveland ;

Allen Sweet, of Detroit, Michigan, upon the Michigan Central Railroad, at said Detroit; and

Robert H. Barr, of Newcastle, Delaware, upon the Frenchtown and Newcastle Railroad, at said Newcastle.

And was described and patented in the following letters patent, viz:

In letters patent of the United States granted to Moncure Robinson, and bearing date March 16, 1839, for an "improved mode of securing railroad rails in their chairs;" also in letters patent of the United States granted to Isaac R. Trimble, bearing date April 10, 1855, and numbered 12704, for an "improved mode of splicing railroad rails."

This respondent admits that it has, since the date of complainants' said reissued letters patent, used certain fastenings for rails, but
15 it denies that the fastenings so used are substantially the same as the "self-adjusting fastener" described and claimed in complainants' said letters patent, or that they contain the invention, discovery, improvements, or combinations described and claimed in said letters patent, or any substantial and material part thereof; and this respondent denies that it has ever made, used, or sold improved fastenings for rails or other metallic substances containing the invention, discovery, improvement, or combinations described and claimed in said letters patent, as alleged in complainants' bill of complaint, or that it has ever infringed any of the exclusive rights or privileges purported to be granted to complainants by their said reissued letters patent.

Without this, that any other matter or thing material or necessary for this respondent to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this respondent.

All which matters and things this respondent is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be herein dismissed with their reasonable charges in this behalf most wrongfully sustained.

THE FLUSHING & NORTH SIDE RAILROAD COMPANY.

HINSDALE & SPRAGUE,
Respondent's Solicitors, 115 *Broadway, N. Y.*

UNITED STATES OF AMERICA,
Southern District of N. Y., ss:

Elizur B. Hinsdale, being duly sworn, says that he is secretary and director of the Flushing & North Side Railroad Company, the
16 corporation named as respondent in the foregoing answer, and that by reason of his said office he has acquired and possesses particular knowledge of the matters stated in said answer; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

E. B. HINSDALE.

Sworn to before me this 7th day of October, 1872.

SETH M. ELDREDGE,
Notary Public, New York.

(Endorsed:) Answer. Filed Octo. 9, 1872.

Circuit court of the United States, eastern district of New York.

ASA JOHNSON ET AL.
vs.
THE FLUSHING & NORTH SIDE RAILROAD COMPANY.

The amended or supplemental answer of the Flushing & North Side Railroad Company, respondent, to the bill of complaint of Asa Johnson and Thomas S. Sandford, complainant'.

This respondent, still saving and reserving unto itself all rights of exceptions to said bill of complaint, for a further and amended or supplemental answer thereunto says, upon information and belief, that the "self-adjusting fastener" described in the letters patent issued to
17 said complainant Asa Johnson, or a material and substantial part thereof claimed in said letters patent as new, was long before the alleged invention thereof by said Johnson in public use upon many railroads in foreign countries, and was patented in the year 1853 in England by letters patent granted and issued to W. B. Adams, and that a description thereof was published in a certain printed volume, by Holley & Colburn, entitled European Railways, published in New York in the year 1858, and that by reference to said volume, and especially to plate (19) nineteen therein, it will appear, among other things, that in both plates and necks of rails enlarged holes, both round and square, were used to provide for expansion and contraction of rails.

And this respondent further says, upon information and belief, that a further description of the said "self-adjusting fastener," described in said letters patent to said complainant, was published in a certain other printed volume, printed and made public long before the alleged invention of said self-adjusting fastener by the said complainant Johnson, entitled Roads and Railroads, by W. M. Gillespie, published by A. S. Barnes & Co., in the city of New York, in the year 1853, the said description being upon page 303 of said volume.

And this respondent prays that this amended or supplemental answer may be taken as a part of the respondent's original answer heretofore duly filed, and may be read in connection with said original answer throughout the progress of this suit.

And all the matters and things hereinabove set forth, as well as those heretofore made known in said original answer, this respondent is ready to aver, maintain, and prove, as this honorable court shall direct,
18 and humbly prays to be hence dismissed with its reasonable charges in this behalf most wrongfully sustained.

THE FLUSHING & NORTH SIDE RAILROAD COMPANY,
Respondent.

HINSDALE & SPRAGUE,
Respondent's Solicitors, 115 *Broadway, N. Y.*

UNITED STATES OF AMERICA,
Southern District of N. Y., ss:

Elizur B. Hinsdale, being duly sworn, says that he is secretary and a director of the Flushing & North Side Railroad Company, the corporation named as respondent in the above-amended answer, and that by reason of his said offices he has acquired and possesses particular knowledge of the matters stated in said amended answer; that he has read the same and knows the contents thereof, and that the same is

true of his own knowledge, except as to the matters therein stated on information and belief; and as to those matters he verily believes it to be true.

E. B. HINSDALE.

Sworn to before me this 19th day of October, 1872.
[L. S.] SETH M. ELDREDGE,
Notarg Public, City and County of N. Y.

(Endorsed:) Supplemental answer. Filed October 19, 1872.

19 Circuit court of the United States, eastern district of New York.

ASA JOHNSON AND THOMAS S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

The replication of Asa Johnson and Thomas S. Sandford, complainants, to the answer of The Flushing North Side Railroad Company, defendant.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, and
20 not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed and denied, is true; all which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by said bill they have already prayed.

FREDERIC H. BETTS,
Solicitor for Complainants.

(Endorsed:) Replication. Filed November 30, 1872.

21 At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 18' day of April, in the year of our Lord one thousand eight hundred and seventy-six.

Present, the honorable Charles L. Benedict, district judge.

ASA JOHNSON ET ANO.
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

On consent of solicitors for the respective parties, and on motion of Frederic H. Betts, sol'r for complainants, it is ordered that Edward J. Cramer be substituted as solicitor for complainants in place of said Frederic H. Betts.

CHAS. L. BENEDICT.

22 (Indorsed:) Vol. , No. . United States circuit court for the eastern district of New York. Asa Johnson et ano. vs. The Flushing and North Side Railroad Company. Order of substitution. F. H. Betts, sol'r for compl'ts. Filed, entered 18th day of April, 1876.

23 United States circuit court, eastern district of New York.

ASA JOHNSON AND THOMAS S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE R. R. COMPANY.

It is hereby consented that the answer in the above-entitled suit may be, and the same is hereby, amended by inserting therein the names of the following railroad companies and individuals as having had knowledge of the use of the invention or self-adjusting fastener described and claimed in the letters patent referred to in the bill of complaint in this cause, and for an alleged infringement of which said patent this suit is brought, prior to the alleged invention or discovery thereof by the patentee in said patent mentioned:

On the Oswego and Syracuse Railroad, and that such use was known to George Skinner, at present the superintendent of the Rockford, Rock Island and St. Louis R. R. Company, and now residing at Rockford, Illinois, and to George A. (or S.) Barnes, Alfred Wilkinson and J. Forman Wilkinson, all of whom reside at Syracuse, New York, and to R. E. Ricker, superintendent of the Central Railroad of New Jersey, and residing at Elizabeth, New Jersey, and to other employees on said road.

On the Newcastle and Frenchtown Turnpike and Railroad Company, a railroad in or running in the State of Delaware, and that such use was known to John Gordon, now residing at Newcastle, in the State of Delaware, and to other employees on said road; to Alexander V. Gordon, now residing at Pittsburg, Pennsylvania; to Thomas
24 V. Gordon, now residing at Schuylkill Haven, State of Pennsylvania, and in the employ of the P. & R. R. R. Co.; to William H. Dobbs, now residing at Newcastle, State of Delaware; to John Hogg, now residing at Elkton, State of Maryland, and to Andrew C. Gray, now residing at Newcastle, State of Delaware, and to Samuel Cowper, now residing at Newcastle, State of Delaware.

Dated May 16, 1876.

EDWARD J. CRAMER,
Solicitor for Complainants.

(Endorsed:) Amended answer. Filed May 16, 1876.

U. S. circuit court, eastern district of New York.

ASA JOHNSON AND THOMAS S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

It is hereby consented that the answer in the above-entitled suit may be, and the same is hereby, amended by inserting therein the names of the following persons who had knowledge of the use of the invention, or self-adjusting fastening, or substantial and material parts thereof, described in the letters patent, and for an alleged infringement of which this suit is brought, before the alleged invention by the said Johnson, as follows:

John H. Reed, who resides at Boston, Massachusetts, and who had knowledge of the use of said invention on the Southbridge and Blackstone Railroad, and a road formerly called the New York Cen-
25 tral, both of which are a part of the present New York and New

England Railroad, and on the Mobile and Ohio Railroad, and on the Boston and Lowell Railroad.

Franklin Henderson, who resides at Somerville, Massachusetts, and who had knowledge of the use of said invention on the Boston and Lowell Railroad.

To Samuel M. Cowper, who resides at Newcastle, State of Delaware, and who had knowledge of the use of said invention on the Newcastle and Frenchtown Turnpike and Railroad Company.

To Wheeler Truesdell, Robert Hewitt, S. W. Squire, who reside at Syracuse, New York, and Robert Murphy, who resides at Oswego, New York, and Charles A. Conlin, who resides at Baldwinsville, and who had knowledge of the use of said invention on the Syracuse and Oswego Railroad.

And by inserting in the said answer in the clause making mention of the book or printed volume called "European Railways," Holley and Colburn, published in New York, in 1857, reference to the following pages of said book, to wit:

Page 95, chap. 6, last paragraph.
" 97, title, "Fish-joints," at bottom of page.
" 106 and 107, title, "Conclusion."

Nov. 21, 1876.

EDWARD J. CRAMER,
Comp'ts Sol'r.

(Endorsed:) Amended answer. Filed November 21, 1876.

26 U. S. circuit court, eastern district of New York.

ASA JOHNSON AND THOMAS S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

Proofs for final hearing on the part of the complainants in the above-entitled suit, taken before William H. De Lancey, special examiner, duly appointed herein under and pursuant to 67th rule in equity, as amended.

NEW YORK, *June 2d*, 1876—2 p. m.

Met pursuant to notice.

By consent of parties the examination is adjourned to June 8th, 1876, at 2 p. m.

NEW YORK, *June 8*, 1876—2 p. m.

Met pursuant to adjournment.

Present, Mr. E. J. Cramer, for complainants; Mr. S. D. Law, for defendants.

It is stipulated between counsel for the respective parties that each party shall retain its own exhibits until the final hearing of the cause.

Complainants' counsel offers in evidence reissued letters patent No. 4870, for improvement in fastening sheet-metals to roofs, granted to Asa Johnson, assignor of two-thirds interest to Thomas S. Sand-
27 ford, dated April 16, 1872, and marked Complainants' Exhibit No. 1, June 8, 1876, W. H. De L., spl. ex'r.

THOMAS S. SANDFORD, a witness produced on the part of complainants, being duly sworn, deposes and says:

1. Q. What is your name, age, residence and occupation?

A. My name is Thomas S. Sandford; my residence, Yonkers, New York; my occupation, secretary.

2. Q. Do you know the line of road operated by the Flushing & North Side Railroad Company, the defendants in this suit; and, if so, how long have you known it?

A. I do, and have known it upwards of four years.

3. Q. Prior to the commencement of this suit, did you examine the rails on said line of road, particularly in regard to slotted side-plates, having a self-adjusting fastener to allow of the expansion and contraction of metal thereon?

(Objected to by defendants' counsel as leading.)

A. I did.

4. Q. What part of line did you examine for such purpose?

A. That part leading out from Hunter's Point to Flushing.

5. Q. What did you there discover?

A. I discovered a fastening in use for fastening the ends of the rails and composed of two slotted side-plates of iron and four adjusting iron bolts.

6. Q. Did you obtain such slotted side-plates and self-adjusting bolts, and have you them now in your possession? And, if so, please produce them.

A. I did, and have them here, and produce them. I produce only one-half of one slotted-plate, and will produce the other half.

29 7. Q. Is the slotted side-plate and fastener now produced a true model of those which were in use on the line of defendants at the time that you examined it, prior to the commencement of this suit?

A. It is, save that this slotted side-plate is only a half of the plate.

8. Q. Is not the other half of the slotted side-plate a fac-simile of this?

A. It is.

(Complainants' counsel offer in evidence slotted side-plate and self-adjusting fastener, and marked Complainants' Exhibit No. 2, June 8, 1876, W. H. De L., sp'l ex'r.)

(Here follows diagram marked page 28.)

9. Q. Were these side-plates used on each side of the rail at the junction?

(Objected to as leading by defendants' counsel.)

A. They were.

Cross-examined by Mr. LAW:

10. X Q. Of what are you secretary?

A. Of an association of steampship companies.

11. X Q. What is the name of the association, and how long have you held that position?

A. North Atlantic Steam Traffic Conference, and have been secretary since 1868.

12. X Q. Please state, if you know, the termini of the defendant's road.

(Objected to, unless the question is confined to a period prior to the commencement of the suit.)

A. At the time I examined it I believe the road ran from Hunter's Point to Flushing, and possibly some little distance beyond Flushing; I am not so familiar with the road beyond Flushing.

30 13. X Q. Did you, at the time you examined that road, know of your own knowledge the extent of the road?

A. Simply from seeing the cars of the company running on the track.

14. X Q. When—state the time exactly, if you can—did you make the examination referred to in your answer to the third interrogatory?

A. I cannot now recall the exact day; it was early part of the month of May, 1872.

15. X Q. How much of the road did you examine for the purpose inquired of?

A. About one mile and a half from Hunter's Point toward Flushing.

16. X Q. Do you mean all the joints of all the rails of the road for that distance?

A. Yes; generally in cases where I found a bolt out I examined particularly.

17. X Q. Where the bolts were not out, could you discover the form of the holes in the plates on the sides of the rails at the joints?

A. No.

18. X Q. How many joints did you find in such a condition that you could discover the holes in the side-plates?

A. About ten or twelve; I cannot now state positively.

19. X Q. How long did such examination occupy you?

A. About three hours.

20. X Q. When did you obtain the Exhibit 2, produced by you?

A. At the time I made the examination.

21. X Q. Was that exhibit actually in use on the road at the time you obtained it?

A. No, sir.

22. X Q. From whom did you obtain it?

A. I found it lying loose on the side of the track.

23. X Q. You have said that such exhibit produced by you is but half of the plate; do you mean that whole plate was twice as long as that produced?

31 A. Yes; I had the plate cut in two for convenience.

24. X Q. And the whole plate you so obtained, was placed on one side of the rails at their joint; am I correct?

A. Yes, sir; and the corresponding plate on the other side of the rail.

25. X Q. Have you such corresponding plate?

A. No.

Redirect by Mr. CRAMER:

26. Q. Do you know, as a matter of fact, that the part of the track that you examined, as you have described, was a portion of the line of defendant's road?

A. Yes.

Recross by Mr. LAW:

27. X Q. How do you know that?

A. By seeing the cars run upon it and from riding in those cars over that track, with tickets issued by the Flushing & North Side Railroad Company, from Hunter's Point to Flushing.

28. X Q. The means of your knowledge are only those mentioned by you in your last answer; am I correct?

A. Yes, sir.

(S'd) THOMAS S. SANDFORD.

Subscribed and sworn before me this 8th day of June, A. D. 1876.

WILLIAM H. DE LANCEY,
Special Examiner.

Complainants' counsel closes his prima facie case.

32 MARCH 26—6.30 p. m.

Present as before.

PHILANDER TRACY, a witness produced and sworn on the part of the complainants, being duly sworn, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. Philander Tracy; fifty-seven years of age; Albany Iron Works, Troy; am an engineer.

2. Q. How long have you been employed at the Albany Iron Works?

A. Thirty-six years, about that.

3. Q. Were you employed at those works in the spring and summer of 1847?

A. Yes, sir. I would correct that; in 1847 I came to Albany to work, in the spring of 1847.

4. Q. You were still working for the Albany Iron Works, were you not?

A. I was paid by Addison Low at the Franklin Machinery Works, Albany, in Dean st.

5. Q. Were you engaged in building an engine, for which the Albany Iron Works had contracted, at that time?

A. Yes, sir.

6. Q. And you still kept up your connection with the Albany Iron Works, did you not?

A. Yes, sir.

7. Q. Who was manager and superintendent of the Albany Iron Works at that time?

A. Mr. John H. Snyder.

8. Q. Do you recollect at that time the Albany Iron Works, under Mr. Snyder's management, constructing certain clamps for use on railroads; and, if so, what?

A. Yes, sir. They were similar to what is called the fish-plate now, with the exception of the holes.

9. Q. Please state what that exception was.

33 A. The holes were punched part way through in the long bar, that is, as the iron was rolled a hole was punched part way through perhaps, I guess, about ⅜ths of an inch. I can't say that I saw them cut, but I saw them after they were in short pieces.

10. Q. What was the shape of the holes?

A. I judge they were round, as near as I could tell.

12. Q. Did you see the plugs which were used in punching the holes in the clamps?

A. I did the ones which were in the rolls.

13. Q. What was the shape of those plugs?

A. They were round, as near round as I could see.

14. Q. How was your attention directed to these clamps and plugs?

A. By its being a new thing.

15. Q. Had you ever seen anything of the kind at the Albany Iron Works before this?

A. No, sir; not that I remember.

Cross-examined by Mr. LAW:

16. X Q. In what year was it that these clamps were rolled that you refer to?

A. It was in 1847, the year I came to Albany.

17. X Q. Before you came to Albany or after?

A. It was while I was working in Albany that I first saw them; it was after I came to Albany.

18. X Q. What time of the year did you come to Albany?

A. In the spring, I am quite sure; I could not say what month.

19. X Q. How long did you continue to work in Albany after you came here; at that place you mention, I mean?

A. Until that engine was completed that they were building for the Albany Iron Works. It was two or three or four months, perhaps longer.

20. X Q. And during that time you were working all the time in Albany, was you not?

A. All the time; I went home every Saturday.

34 21. X Q. You went home on Saturday after working hours, I suppose; am I right?

A. Sometimes I used to lose half a day; sometimes a quarter.

22. X Q. And you came down to Albany on Monday morning, I suppose?

A. Yes, sir; as a general thing. Sometimes I came down and commenced working after 12 o'clock.

23. X Q. Had you anything to do with rolling those splice-plates?

A. No, sir.

24. X Q. And did you ever examine particularly the rolls by which they were rolled?

A. I did so; I went up close to the rolls and looked at them.

25. X Q. Did you see the splice-plates at the time the holes in them were made entirely through?

A. I saw some after they were punched through—bolted together I did not see them punching the holes entirely through the splice-plates.

26. X Q. For how long a time were they rolling out such splice-plates at those works?

A. I can't say.

27. X Q. How many times did you examine the rolls they then used for rolling out such plates?

A. I can't say how many times.

28. X Q. Did you examine such rolls for the particular purpose of seeing what was the shape of the plugs that made the holes part way through the plates?

A. I did not examine them for that purpose.

29. X Q. Can you state positively, from what you saw when you examined such rolls, what was the exact shape of such plugs?

A. I suppose they were round; they looked round to me; I can't swear they were round; I supposed they were round; I did not calliper them.

35 30. X Q. Do you know of your own knowledge what was done with those splice-plates after they were finished?

A. I do not.

31. X Q. How long had you been to work at the Albany Iron Works when these splice-plates were made?

A. Seven or eight years; exact I can't say.

32. X Q. If you was paid while you were at work in Albany by the Franklin Machine Works, how did you keep up your connection with the Albany Iron Works? What do you mean by saying you kept up your connection with those works?

A. I went by request of Mr. Winslow to work on the engine until it was completed, so I should be familiar with all parts of it. I expected to run it after it was done, and I did run it.

Redirect:

33. Q. Your residence was contiguous to the Albany Iron Works in 1847, was it not?

A. Yes, sir; a few rods from the works.

34. Q. Had you access to the works on Sunday?

A. Yes, sir.

35. Q. And did you frequently avail yourself of the privilege of visiting the works on Sunday?

A. Yes, sir.

36. Q. So that notwithstanding your absence in Albany during the week, you were still enabled to see and examine such work as was in progress; is that so?

A. Yes, sir.

37. Q. Is it not the fact that you took a special interest in such work as might have been commenced and executed during your enforced absence?

A. Well, I did considerable.

38. Q. You say in answer to the 29th cross-interrogatory that you cannot swear that the holes in the clamps and the plugs were round. Judging from your experience as a mechanic, and notwith-
36 standing the fact that you did not calliper them, is it not your opinion from what you then saw, and from your present recollection, that those holes and plugs were, and were intended to be, as round as it is possible to punch holes in iron bars?

(Objected to as asking for the mere opinion and belief of the witness, and not for actual facts as to what was done, so as to enable the court from his statement of what was actually done to form its opinion.

Counsel for complainants desires to have it noted on the record that the witness has stated in answer to the 29th cross-interrogatory that the holes looked round to him, and this question is propounded simply to gather from the witness himself what he meant by saying the holes looked round.

Defendant's counsel then insists that the question should have been what the witness meant by his answer, and not by a roundabout way of asking his opinion to make the question suggestive, and the objection taken is repeated.

To which proposition of law the complainants' counsel does not assent.)

A. As near as I could measure with the eye.

39. Q. You say in answer to the 32d cross-interrogatory that you expected to run it—meaning the engine—after it was done, and "I did run it." Where did you run it?

A. At the Albany Iron Works.

Recross by Mr. LAW:

40. X Q. How many times did you visit the Albany Iron Works on Sundays, while they were rolling those spliced plates?

A. I used to go there regularly every Sunday, but I can't say how many times while they were rolling the spliced plates.

37 41. X Q. What led you to take a special interest in what was done at the works while you were at work at Albany, at the engine?

A. Nothing in particular, only I went every Sunday there, as I have done ever since.

42. X Q. If you had never before that time seen any splice-plates rolled, how would your then experience as a mechanic help you to form

any opinion whether the holes in the splice-plates were round or some other shape?

A. I don't know. It is natural for any mechanic to notice and sound the particulars of anything when they pass it, especially if it was new.

43. X Q. From your testimony, it is 30 years the coming spring since you saw such splice-plates made at the Albany Iron Works; when first since that time, 1847, was your attention called or you asked about the particular shape and form of the plugs in the rolls, by which the holes were made part way through the splice-plates?

(Objected to by complainants' counsel as immaterial and not open on recross-examination.)

A. I have been asked questions whether I remembered of their making them at that time. I can't say exactly when. It was about a couple of weeks ago.

Redirect by Mr. CRAMER:

44. Q. Supposing you had never seen a clamp, such as is here referred to, in your life; would that make any difference, in your judgment, as to whether a hole was round or any other shape?

(Defendant's counsel objects, and the question is most manifestly improper, as the questions in this case refer to the particular
38 shape of the holes used, and also as improper as calling for the belief or opinion of the witness under certain conditions which have no relevancy to this suit or anything in it.

Counsel for complainants desires to say that this redirect interrogatory is almost similar to cross-question 42.)

A. I should be apt to notice the shape of it, whether round or square.

Recross by Mr. LAW:

45. X Q. If you had never seen a splice-plate, such as has been referred to, and did not know what was the form of the hole to be made through it, and if the hole actually made through such a plate was not round, but slightly oval or oblong, and you should see such a plate with such a hole through it, but having no knowledge of the exact shape, would not you, from your impressions so gained by looking at the plate, most naturally consider the hole to be round, and particularly if you did not examine it closely and carefully, and calliper it?

(Objected to as being a purely hypothetical question, impossible to be answered by any witness fairly without first showing him some clamp or splice-plate constructed in accordance with such hypothesis.)

A. Well, if it was what we call a square hole or an oblong one, I would be apt to notice it.

46. X Q. You have testified that you did not examine the rolls by which the splice-plates were made for the particular purpose of seeing what was the shape of the plugs that made the partial holes in such plates, and that your attention has not been directed to the particular shape or form of such plugs until within a couple of weeks. Now,
39 if those plugs, instead of being not exactly round, were oblong to the extent of one-quarter of an inch, do you think, under the circumstances you have mentioned, you can say whether such plugs were round or oblong to the extent mentioned?

A. I could.

PHILANDER TRACY.

Subscribed and sworn before me this 26th day of March, 1877.

WILLIAM H. DE LANCEY,
Special Examiner.

FRANCIS HOPE, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Frank Hope; fifty-six years old; Albany Nail Factory is my residence. I am a hammersman.

2. Q. Are you in the employ of the Albany Iron Works, and how long have you been so?

A. I am, and have been for thirty-five years.

3. Q. Were you there in the early spring and summer of 1847?

A. Yes, sir.

4. Q. Who was manager of the works at that time?

A. Mr. John H. Snyder.

5. Q. What was your occupation round the works at that time?

A. I was at work in the spike factory.

6. Q. Do you recollect the rolling of certain clamps under Mr. Snyder's superintendence at that time?

A. Yes, sir.

40 7. Q. Did you see any of the clamps while they were being rolled, and after they were rolled and cut?

A. Yes, sir. I see them rolling them.

8. Q. Will you please to describe such clamps and the process of rolling them?

A. I happened to come in the mill and I saw them rolling and I went over and looked at them, and Mr. Snyder was looking at them, too, and I saw the bars lying round on the straight bench where they laid them.

9. Q. Did you see any plugs in the rolls?

A. I did not pay attention to that.

10. Q. Did you see any holes in the bar after they came out of the roll?

A. Yes, sir.

11. Q. What was the shape of those holes?

A. I call them round holes.

12. Q. When did you first see any of those clamps?

A. That was the first time when I saw them rolled.

13. Q. How often after that did you see them?

A. I don't know. I saw them once or twice the next day; I went to see them because it was something new to me.

Cross-examined by Mr. LAW:

14. X Q. When you saw such clamps at those one or two times did you examine them particularly as to the exact shape of the holes made in them?

A. Yes, sir.

15. X Q. What caused you at that time to examine particularly as to the exact shape of the holes in the clamps?

A. It was something new that I never saw before, so I stepped over to look at it.

16. X Q. That is the only reason, is it not?

A. Yes, sir.

17. X Q. You saw these clamps, as I understand you, as they were rolled. Am I correct?

A. Yes, sir.

41 18. X Q. Were the holes made entirely through the clamps, or how?

A. To the best of my knowledge they were in about three-eighths of an inch; they did not go clear through the clamps.

19. X Q. Did you see those holes made entirely through the clamps?
A. No, sir.
20. X Q. Do you know of your own knowledge what was done with those clamps?
A. No; I don't know.
21. X Q. When first after you saw such clamps being made in 1847 was you asked about the shape of the holes in such clamps?
A. About two weeks ago, I suppose.
22. X Q. How do you fix the date, 1847, when you saw them made—from memory, or from what has been told you by some one, or how?
A. It was about the time I was working there, and there were other things being done there.
23. X Q. What were those other things to which you refer? Mention them.
A. Well, we rolled some horseshoe iron that same summer.
24. X Q. Did they roll horseshoe iron more than one summer?
A. No, sir; they roll some now, but not then.
25. X Q. How are you able to say positively that they rolled the horseshoe iron in 1847, and not in 1846 or 1848 or 1849?
A. I have a reason for it, because I worked at it myself.
26. X Q. How can you be positive that it was in 1847; or do you mean—or is it your impression that it was that year?
A. That is to the best of my knowledge.
27. X Q. Can you state positively what year you began to work in the Albany Iron Works?
A. Yes, sir; in 1842.
42 28. X Q. From what fact or circumstance can you fix that date, 1842?
A. Then they started a new factory; built a new spike-factory in 1842, and the boss came and hired me.

FRANCIS HOPE.

Subscribed and sworn before me this 26th day of March, 1877.
WILLIAM H. DE LANCEY,
Special Examiner.

CHARLES OSGOOD, a witness produced on the part of the complainant, being duly sworn, deposes and says:

1. Q. What is your name, age, residence, and occupation?
A. My name is Charles Osgood; age is fifty-two; my residence is Grafton, Rensselaer County; I am a farmer.
2. Q. Were you ever in the employ of the Albany Iron Works; and, if so, when, and for how long a period?
A. I was, from the time I was ten years old till I was about twenty-five—fifteen years.
3. Q. Were you in their employ in the year 1847?
A. I was.
4. Q. In what capacity—what were you doing at that time, 1847?
A. Making boiler-rivets.
5. Q. Who was manager of the works then?
A. Mr. John H. Snyder was manager of the mill.
6. Q. Did you see any clamps which were rolled at the works at that time under the superintendence of Mr. Snyder?
A. Yes, sir; I did.
7. Q. How was your attention called to them?
A. I made the bolts for them.
43 8. Q. Who directed you to make the bolts?

A. Mr. John F. Winslow.

9. Q. He was one of the members of the firm, was he not?

A. Yes, sir.

10. Q. Did he give you a model or pattern of the clamp with the holes in it which the bolts were to fit?

A. Yes, sir.

11. Q. What was the shape of the holes in that model?

A. Round.

12. Q. Did you make the bolts round in order to fit the holes in the model?

A. Yes, sir.

13. Q. How many bolts did you make, as nearly as you can remember?

A. At one time I made about four or five hundred pounds; at another I made over fifty hundred pounds.

14. Q. Was that the first clamp of the kind you had ever seen?

A. Yes, sir.

15. Q. What was the shape of the bolts? Give a general description of the same.

A. They were three inches long; made out of five-eighth iron; large round flat head, and a key-hole punched into the end of it, or near the end.

16. Q. What was the object of the hole near the end?

A. To put in a tapering key to draw them together, those clamps.

17. Q. Did you make the keys, also?

A. No, sir.

18. Q. Did you see any of the keys that were made?

A. I did.

44 19. Q. Please look at the bolts now shown you, marked "Defendant's Exhibit Oswego and Syracuse Rail-joint, 1850, K. G. W., examiner," and state whether or not in general shape they are like those which you made at the Albany Iron Works in 1847?

(Objected to as irrelevant and immaterial.)

A. They are something that shape.

20. Q. Did you see any of the bars or clamps as they were being rolled?

A. Yes, sir.

21. Q. Did you notice the holes in the clamps, if there were any, as they came out of the roll?

A. I saw the impression of the hole, or where the hole was to be.

22. Q. How deep was that impression?

A. About $\frac{5}{16}$ or $\frac{3}{8}$, or in that neighborhood.

23. Q. What was the shape of that impression?

A. Round.

24. Q. Did you see any of the clamps after the holes had been punched through?

A. I did; up to Mr. Winslow's office.

25. Q. What was the shape of those holes?

A. Round.

26. Q. Then the holes in the clamps and in the pattern which was given to you from which to shape the bolts were alike round, were they?

A. Yes, sir.

27. Q. And the bolts were made to fit those holes, were they?

A. Yes, sir.

Cross-examined by Mr. LAW:

28. X Q. How do you fix the particular year when you made those bolts you speak of?

A. I went off to the West India Isles in the fall or winter of fifty-seven.

29. X Q. What has that got to do with what you did in forty-seven?

A. I came back in forty-eight. I meant forty-seven, instead of fifty-seven.

45 30. X Q. What time of the year was it that you made those bolts?

A. I think it was along in the spring.

31. X Q. Was it the custom at those works, when bolts for any purpose were to be made, to furnish a specimen or model of the thing with which the bolts were to be used, or were the directions to make bolts at a given size and length, &c.?

A. Sometimes it was to have a pattern for making bolts—for making rivets, specification was marked on the books or order.

32. X Q. Mention some other cases, if you can, where models were furnished to make bolts from or according to.

A. From Norris & Co., of Philadelphia. They always sent in a model for bolt and rivets.

33. X Q. Do you mean a model of the bolt or rivet itself?

A. Of the rivet itself, or bolt.

34. X Q. Mention some other instance at the Albany Iron Works, when bolts were to be made for any purpose, that a model of the thing with which the bolts were to be used was furnished to you to make the bolts.

A. I don't know as I can recall any now.

35. X Q. How many models or pieces of clamp were furnished you to made the bolts by, as you have testified?

A. Two.

36. X Q. How long were they?

A. Eighteen or twenty inch, I should think.

37. X Q. How many holes were there in them?

A. I think there were four.

38. X Q. Are you certain as to the number?

A. Yes, sir; I am.

39. X Q. When first, if ever, since 1847, have you seen any clamps such as you say were then furnished you to make bolts from or for?

A. I have not seen any since.

46 40. X Q. You say you saw, at Mr. Winslow's office, clamps with the holes punched through them; how many of such did you see there?

A. There might have been three or four of them.

41. X Q. You say you saw clamps being rolled and the impression of a hole made in them; did you see the holes made entirely through such clamps?

A. Yes, sir.

42. X Q. How was that done?

A. By a punching machine.

43. X Q. Was that a part of your work?

A. No, sir.

44. X Q. You say the bolts you made were three inches long, and made out of ⅝-in. iron; how do you remember so particularly the size and length of those particular bolts made thirty years ago?

A. Because they were weighed to see how much a bolt would weigh;

and further, Mr. Winslow gave me a penny a pound for making them; and I made them all in three days.

45. X Q. Both lots in three days?

A. No; the last lot of fifty hundred pounds.

46. X Q. Are not bolts generally sold by the pound, and therefore weighed?

A. Yes, sir; and made by the pound, or were at that time.

47. X Q. When did you stop working for the Albany Iron Works?

A. In the year 1848. I was married at that time and bought me a farm, and have been on it since.

48. X Q. When first after 1847 was any enquiry made of you about the clamps you have mentioned, and the shape of the holes in them?

A. Between two and three weeks ago.

49. X Q. What, if anything, has been told you by any person about such clamps or the holes in them?

(Counsel for complainants objects to this course of enquiry, not
47 that he has any objection to the witness answering, but that it seems intended to cast a reflection upon him and upon counsel. Counsel for defendant does not consider himself responsible for what counsel for complainant thinks.)

A. No one has told me anything; they have asked me some questions.

50. X Q. Do you know of your own knowledge what was done with the clamps and bolts after they were made?

A. No; I don't.

51. X Q. Do you know of your own knowledge that no other clamps were made at those works except those you speak of being made in 1847, and for which you made the bolts, as you say?

A. There were none made before that time; I know they make some now.

52. X Q. Do you know that no other clamps and bolts, except those you have testified about, were made at those works about 1847?

A. I know that there was no more bolts made about that time.

53. X Q. How do you know that; were you the only bolt-maker there was there?

A. I know it by my father being foreman of the factory, and I was the only bolt-maker at that time, and if there had been anything of the like of that I should have known it.

54. X Q. How are you able to testify so positively as to the shape of the holes in the clamps when your knowledge was obtained so long ago, and you have only lately, within two or three weeks, been enquired of as to such clamps and holes in them?

A. Because it was about the last of working at the Albany Works, and making fifty dollars in three days in making those bolts.

55. X Q. But you had nothing to do with making the clamps, had you?

A. No, sir.

48 56. X Q. Have you talked during the last two or three weeks with anybody, except complainants' counsel, about those clamps made in 1847, and the shape of the holes in them; and, if so, with whom?

(Objected to as incompetent and immaterial.)

A. Yes, sir; I have talked with Mr. Tracy and Mr. Hope and Snyder.

CHARLES OSGOOD.

Subscribed and sworn before me this 26th day of March, 1877.
WILLIAM H. DE LANCEY,
Special Examiner.

Adjourned to Thursday, March 29, 1877, at 11 a. m.

NEW YORK, *March 29th*, 1877—11 a. m.

Present, Mr. Betts, Mr. Cramer, for complainants; Mr. Law, for defendants.

THOMAS HARRITY, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, residence, and occupation.

A. My name is Thomas Harrity; about fifty-four years of age; my residence is Troy; am a spring-maker.

2. Q. Did you ever work at the Albany Iron Works; and, if so, from about what time to about what time?

49 A. I think I went to work there in 1840, and I can't very well state distinctly the date I left there. I think it is about twenty-four or twenty-five years since I left there.

3. Q. You left there, then, about 1852 or '3?

A. About then, sometime, I suppose.

4. Q. What was your work at the Albany Iron Works?

A. Working at spring-making, in the employ of my brother.

5. Q. What kind of machines did you have to do with at the Albany Iron Works?

A. I had to do with several kinds of machines. I had to do with several kinds of machines that were used in spring manufacture, such as rolling machines, shears, punch, polishing wheels, and such like as are used in manufacturing springs.

6. Q. What were the springs that were made there?

A. For general use, for wagon use, and for cars also; elliptic and half-springs for wagon and car use—all steel.

7. Q. You spoke of having to do with punching machines at the Albany Iron Works; what were those for?

A. For spring manufactures.

8. Q. To do what in spring manufacture?

A. To punch centre holes in the springs. There are three holes—one in the centre, and one on each side—generally running about four inches from centre to centre of the holes.

9. Q. Who had charge of the punching machine or machines?

A. My brother was in charge of the entire business.

10. Q. Who operated the punching machines?

A. I did sometimes.

11. Q. How many punching machines were there?

A. Two, sir.

50 12. Q. While you were at the Albany Iron Works, did you ever punch any railroad clamps?

A. Yes, sir.

13. Q. Can you tell about when that was?

A. To the best of my opinion, it was sometime about 1847.

14. Q. Who gave the order for them to be punched?

A. Mr. Snyder.

15. Q. Who was Mr. Snyder, and what was his position at the Albany Iron Works?

A. He was superintendent.

16. Q. Please describe these railroad clamps as they were delivered to you to be punched.

A. They were from about sixteen to eighteen inches in length—in that neighborhood, with the holes impressed in the iron when they come there.

17. Q. How many impressions of holes, and in what situation were they on the clamps?

A. Four impressions—two situated close to the centre, and one on each end.

18. Q. How wide were these clamps?

A. I never measured them. I forget now; the exact width may have been two and one-quarter or two and a half inches, but I am not positive.

19. Q. How deep were the impressions of the holes in the clamps as they were delivered to you?

A. To the best of my opinion, about half-way through.

20. Q. Do you know where these clamps were rolled, and in what way the impression for the holes were made in them?

A. I did not see the iron rolled.

21. Q. Who delivered them to you?

A. They were brought by a truckman.

22. Q. Do you know where from?

A. From the mills, I presume.

23. Q. What mill?

A. Mr. Corning's mill. Corning & Winslow's mill.

51 24. Q. Was that the mill of the Albany Iron Works?

A. Yes, sir.

25. Q. What was the shape of the impressions for the holes in those clamps as they were delivered to you?

A. They were round.

26. Q. Are you sure they were not at all oblong?

A. Yes, sir; I am sure they were not.

27. Q. Was any punch made for punching the holes through those clamps; and, if so, who made it?

A. They were made by our blacksmith we had employed at the time—a die and punch.

28. Q. Did you see the die and punch?

A. I applied them to the machine, and punched the clamps.

29. Q. Please describe the die and punch you used for punching these clamps.

A. The die, in the forging of it, is punched from the bottom side with a certain amount of draft, in order to allow the punches to pan down easily. There is a little draft to the punch also.

30. Q. Please explain what you mean by draft.

A. What I mean by draft is, as the punch goes through the iron, that it won't bind on the upper part of the punch.

31. Q. Do you mean that the hole in the die tapers?

(Objected to, as leading.)

A. Yes, sir.

32. Q. Tapered which way?

(Same objection.)

A. Larger in the bottom than in the top surface of the die.

33. Q. Did the punch also taper; and, if so, which way?

(Same objection.)

52 A. A little, so as not to have it bind on the upper part of the punch in going through the iron. The face of the punch is the largest.

34. Q. What was the shape of the punch for punching the holes through these clamps?

A. A round punch.

35. Q. Are you sure that it was not all oblong?

A. Yes, sir; perfectly round.

36. Q. And what was the shape of the hole in the die used for punching these clamps?

A. A round hole on the top surface.

37. Q. Were all of the four holes in each of the clamps punched with the same round punch?

A. Yes, sir.

38. Q. Did you have any pattern to go by?

A. A wooden pattern brought there by Mr. Snyder.

39. Q. What was the shape of the holes in that?

A. Round.

40. Q. Did you ever do any work in punching railroad clamps on any other occasion than at the time you mentioned at the Albany Iron Works?

A. No, sir.

41. Q. Look at the clamps, marked Defendant's Exhibit Oswego and Syracuse Railroad Joint, 1850, and state how they correspond in size and position of the holes in them with the railroad clamps which you punched at the Albany Iron Works about 1847.

A. The holes in those clamps in the exhibit are located about as they are in them.

42. Q. And how about the size of the clamps, length and breadth?

A. They may have been about that size, or wider, for what I know; am not positive of the exact width.

43. Q. Are you a practical mechanic?

A. Practical spring-maker.

53 44. Q. Are you accustomed to noticing the effect and appearance of the wear or use upon metals and articles made of metal?

A. It depends, in my judgment, altogether upon the amount of strain on them.

45. Q. (Question repeated.)

A. I notice that where there is a heavy strain, that it has a more telling effect upon the article in use.

46. Q. What I want to know is, whether your experience as a mechanic is such that you can form an intelligent opinion whether an article was made in a given shape or has become worn into it?

A. My experience in that respect is in this way: I find—my experience in machinery being considerable—I find that bearings, and journals, and so forth, that have a laborious work to do, wear out rapidly.

47. Q. Take, for instance, a hole punched in a spring, such as you are accustomed to manufacture, could you tell by inspecting it, after it had been in use, whether the hole was punched into the shape in which you found it, or whether it had got worn?

A. The hole punched in a spring is not so liable to wear so rapid as that in soft iron.

(Answer objected to as irresponsive.)

48. Q. (Question repeated.)

A. I answered the question by saying it will not wear as rapidly as in soft iron, for the reason that spring plate is tempered and is harder.

(Same objection to answer.)

49. Q. Can you tell by examining the Defendant's Exhibit Oswego

and Syracuse Railroad Joint, 1850, whether the holes in those joints were originally punched oblong or not?

(Question objected to as irrelevant and immaterial.)

A. These holes (looking at exhibit) are worn.

54 50. Q. In your opinion, as originally punched, were the holes round or oblong?

(Same objection.)

A. I think them holes (referring to exhibit) were round.

Cross-examined by Mr. LAW:

51. X Q. Can you tell the year in which you left the Albany Iron Works?

A. I am not positive.

52. X Q. You say sometimes you operated the punching machines used by your brother; who else besides you operated them?

A. Some of the men in the shop, if he wanted I should do anything else.

53. X Q. Mention who else besides yourself operated those punching machines; mention the names of those you know to have operated those punching machines.

A. I have forgotten who they were, it is so long ago.

54. X Q. Is your brother, who had charge of the spring manufacture at the Albany Iron Works, alive; and, if so, where is he, and what is his full name?

A. He is dead, sir.

55. X Q. Fix the exact year and time of year when you punched the railroad clamps you have said you punched there.

A. I think it was in 1847. I could not tell what time of the year.

56. X Q. What makes you think it was in 1847; is there any fact or incident which enables you to fix it at that time, or what induces you to think it was in 1847?

A. To the best of my opinion it was about that period. There is no fact or incident that enables me to fix it; but I think it was about that time.

55 57. X Q. Have you lately talked with anybody besides the counsel in this case about punching those clamps; and, if so, with whom?

A. I have had no conversation with anybody any more than I was notified to come down here.

58. X Q. Who notified you, and when, to come down here?

A. On last Monday; I think it was by Mr. Swart.

59. X Q. And you have had no conversation, as I understand you, with anybody besides the counsel, as to your connection in the making those clamps, and when you made them; is that so?

A. Yes, sir.

60. X Q. Then you did not know what you was coming down here for; did you?

A. Oh, yes; Mr. Swart told me I was wanted down here to testify what I knew about this matter; that is all.

61. X Q. And he explained what the matter was as to which you was wanted to testify?

A. He simply told me I was wanted down here to testify about the matter.

62. X Q. Did he tell you anything about what matter it was you were wanted down here to testify as to?

A. About those fish-bars.

63. X Q. What did he say about those fish-bars?

A. That I was wanted down here to testify what I knew about them.

64. X Q. About what fish-bars?

A. Fish-bars made at the Albany Iron Works.

65. X Q. Was anything said by Mr. Swart or yourself as to the time when such fish-bars were made at the Albany Iron Works—I mean the fish-bars about which you were wanted to testify; and, if so, what was said by either of you?

A. He asked me if I remembered doing anything of that kind; nothing was said about the time I did the work, as I remember.

56 66. X Q. You say Mr. Snyder gave the order to have the clamps punched; did he give that order to you individually?

A. I think that he gave it to my brother and my brother gave it to me, with the wooden pattern to be governed by.

67. X Q. The holes were to be punched in the clamps where the impressions for the holes had been made, were they not?

A. Yes, sir.

68. X Q. What, then, was the use of the wooden model?

A. To be certain that the holes were right.

69. X Q. Then you could not rely on the impression for the holes in the clamps, could you, if you wanted a model to be certain the holes should be made right?

A. I suppose the object of the pattern was to get the holes right.

70. X Q. If that was the object of the pattern, then, the impression made on the clamps could not be relied upon alone for making the holes, could they?

A. No. My idea was they wanted to correspond with those in the pattern.

71. X Q. You say you presume the clamps that were delivered to have the holes punched in them were brought from Corning & Winslow's mill; do you know of your own knowledge where they were brought from and where rolled?

A. From the mill.

72. X Q. Did you see them brought from the mill?

A. The man who brought them worked at the mill.

(Answer objected to as irresponsive and evasive.)

73. X Q. Question repeated.

A. I did not see them brought from the mill.

74. X Q. How many clamps did you punch at the time you refer to?

A. I couldn't say how many.

57 75. X Q. State, as near as you can, how many hundred or thousand.

A. I never made any estimate; can't tell how many; there were quite a number of them.

76. X Q. How long was you employed in punching them?

A. I couldn't tell how long we were employed in punching them. Punched some now, and some again, and so on.

77. X Q. Then they were not all punched at one time or continuously till they were finished, were they?

A. No, sir; they were not.

78. X Q. State, as near as you can, about how long it was after they were commenced that the whole job was done.

A. I couldn't tell exactly how long it was.

79. X Q. Did the whole job occupy two weeks or a month?

A. I couldn't tell how long it took to do them.

80. X Q. If you cannot say more definitely about how many clamps

were punched or how long that work was being done, how are you able to be so definite as to the length and width of the clamps?

A. I was not definite.

81. X Q. Are you positive as to the shape of the impression for the hole which was in those clamps?

A. Yes, I am positive about that; it was round.

82. X Q. After you had punched those holes in those clamps, when, first after that time, was your attention called to those clamps; when were you first asked about them?

A. Not until a few days ago.

83. X Q. What enables you at such a length of time, thirty years, since you punched those clamps, to be positive about the exact shape of the holes that were punched in them so long ago?

A. I am pretty conclusive about it that they were round.

58 84. X Q. Is there anything, except general recollection, which enables you to say what was the exact shape of those holes?

A. That is all I remember, from general recollection, that the holes were round.

85. X Q. You say you think the holes in the clamps Defendant's Exhibit Oswego and Syracuse Railroad Joint, 1850, were originally made round; what enables you to say that?

A. From the appearance of them.

86. X Q. Please measure the holes in such exhibit, and state how much now their long diameter exceeds their short diameter.

(Objected to as immaterial.)

A. These holes are all sizes.

87. X Q. Measure the largest and smallest holes in those exhibits and give the difference between their long and short diameter.

(Same objection.)

A. One is three-quarters and one-sixteenth of an inch one way and three-quarters the other way. Another is seven-eighths one way and three-quarters and one-sixteenth the other.

88. X Q. You say that the effect of wear or use on articles made of metal would depend upon the amount of strain to which they were subjected, a heavy strain having the most telling effect; have you been accustomed to examine rail-joint splice-bars as to the effect on holes made through them from the strain to which the rails are subjected?

A. I have not been accustomed to examine them.

89. X Q. Do you know, of your own knowledge, what became of those splice-bars you punched in 1847, at the Albany Iron Works, after they were punched?

A. I don't know anything about them after they were punched.

59 90. X Q. Where, in Troy, is your present place of business, and have you been there since you left the Albany Iron Works?

A. North Troy, Hanover Green Spring Works, but we have not been there all the time; part of it we were at the Hollow Road. We started there when we left the Albany Iron Works.

Redirect by Mr. CRAMER:

91. Q. Were there any other punching-machines used at the Albany Iron Works besides those that you worked at at that time?

A. No, sir; there were none but what we had.

THOMAS HARRITY.

Subscribed and sworn before me this 29th day of March, 1877.
WILLIAM H. DELANCEY,
Special Examiner.

Adjourned to April 2, 1877, at 11 a. m.

Adjourned to April 4, 1877, at 11 a. m.

NEW YORK, *April* 4, 1877—11 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

JOHN H. SNYDER, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, residence, and occupation.

A. My name is John H. Snyder; my age sixty-three; I now reside in Richmond, Va.; I am a rolling-mill superintendent.

60 2. Q. Did you ever work at the Albany Iron Works; and, if so, when and for how long a time?

A. Yes; I have worked at the Albany Iron Works from the fall of 1835 to June, 1870.

3. Q. In what capacity were you employed at said works?

A. Since 1839 I have been superintendent, until I left in 1870.

4. Q. What were your duties as such superintendent?

A. My duties were various. In the first place I had charge of all the machinery, and of all the workmen inside the building, and of all the work being done there, the goods being manufactured, to see that all the orders were properly executed, and had general supervision of the rolling-mill and puddling department.

5. Q. While you were at the Albany Iron Works did you manufacture any railroad clamps?

A. I did.

6. Q. Can you tell about what time you first manufactured these clamps?

A. About the spring of 1847.

7. Q. Do you know from whom you obtained the order to make these clamps?

A. From Mr. John F. Winslow.

8. Q. What position did he hold in the Albany Iron Works at that time?

A. He was the agent and part owner of the works.

9. Q. When you got the order what did you do?

A. I had to get up a new set of stands and rolls for the purpose of completing this order.

10. Q. Please describe generally this new machine and its mode of operation.

A. A set of rolls placed in two standards. The bottom roll had a groove turned in it to correspond with the oval shape of the bar. The top roll had a corresponding tongue to fit in this groove, with a

61 plain surface to form the flat side of the bar, and in the groove cast-steel plugs were inserted, and so arranged that one revolution of the roll would make two bars.

11. Q. What was the shape of the cast-steel plugs?

A. They were perfectly round. They were turned in the lathe.

12. Q. What was the purpose of those plugs?

A. To make impressions in the bars where the holes were to be.

13. Q. How deep an impression would those plugs make in the clamps?

A. From five-sixteenths to three-eighths of an inch deep.

14. Q. What was the shape of those impressions?

A. They were round like the plugs; they couldn't be otherwise.

15. Q. What became of the clamps or what was done to them after they came out of the roll?

A. They were taken to the spring factory and there cut up into proper lengths, and then taken to the punch and were punched.

16. Q. What do you mean by proper lengths?

A. To correspond with the wooden pattern sent in to work by—about sixteen to eighteen inches.

17. Q. Did you have personal supervision of the removal of the clamps to the spring factory and of the cutting and punching to which you have referred?

A. I did.

18. Q. What kind of machine was used to punch the holes in the clamps?

A. An ordinary punch, with punches and dies arranged in the usual way for punching.

19. Q. What was the shape of the punch?

A. Round.

20. Q. Do you know the names of any of the persons who operated the punch; and, if so, please state them?

62 A. I do. The man who operated the punch at that time and who punched the clamps was named Thomas Harrity.

21. Q. Did you see him operating the punch?

A. I did.

22. Q. Did you see the clamps after they had been punched as you have described?

A. I did.

23. Q. What was the shape of the holes in the clamps after they were there punched and completed?

A. They were round.

24. Q. You say that you had a pattern from which to work in making these clamps; who gave you that pattern?

A. Mr. John F. Winslow.

25. Q. Did you make these clamps exactly in accordance with that pattern?

A. I did.

26. Q. Do you know what became of that pattern?

A. I do not.

27. Q. Do you know where the bolts, if any, were manufactured to be used in these clamps; and, if so, where?

A. I do; they were made at the Albany Iron Works.

28. Q. Were they made under your personal supervision?

A. Yes; I was the judge to decide if they were right or not; to decide if they corresponded with the pattern.

29. Q. Do you know the name of the person or persons who cut the bolts; and, if so, who?

A. I do. His name was Charles Osgood.

30. Q. Please describe the size and shape and general appearance of such bolts.

63 A. The size of the bolts were about five-eighths of an inch diameter, with a large flat head—the length about three inches, with slotted key-hole near the end—the slotted key-hole was

about three-quarters of an inch long, large enough to receive a key one-eighth of an inch thick.

31. Q. How did the size of the bolts correspond with the size of the holes in the clamps?

A. They were nearly a close fit.

32. Q. How nearly?

A. Just barely room enough to put the bolt through without driving.

33. Q. Who rolled the iron for the bolts, if you know?

A. I gave directions for it to be rolled.

34. Q. Was there any other machine used at the Albany Iron Works at that time for rolling and punching clamps except the one you have described as having been made and operated by you?

A. There was no other.

35. Q. How long after this time (1847) did you manufacture railroad clamps at the Albany Iron Works?

A. None, until 1867, to my knowledge.

36. Q. Would you have known if any had been made there?

A. I would.

37. Q. Did you use the same machine, or a similar one, to roll clamps in 1867, as you had used in 1847?

A. No; it was quite different.

38. Q. Look at the exhibit marked "Defendant's Exhibit Oswego and Syracuse Rail Joint, 1850, K. G. W., ex'r," and state how these clamps correspond in size and shape of said clamps, and position of the holes in them, with the railroad clamps which you have made at the Albany Iron Works in 1847?

A. The clamps compare in shape and size with the pattern I had to work from in 1847, and also as to the position of the holes.

64 39. Q. Do you know, and, if so, please state, how long you were engaged in the manufacture of these clamps at the Albany Iron Works in 1847?

A. As near as I can remember, we were engaged about three months in making them. Not all the time steady.

40. Q. Do you know who was the shipper at the Albany Iron Works in 1847, and, if so, who?

A. I do. John McPhail.

41. Q. Is he alive or dead?

A. He is now dead. Has been dead about eighteen years.

42. Q. Are you a practical mechanic?

A. I am.

43. Q. What did you serve your apprenticeship at?

A. To learn the various branches connected with rolling and manufacturing of iron and the iron business generally.

44. Q. Have you been accustomed to notice the effect and appearance of wear or use upon metals and articles made of metal?

(Objected to, as it does not appear that the witness is called as an expert, but only as to matters of fact, and also as irrelevant and immaterial.)

A. I have.

45. Q. Can you tell by examining the "Defendant's Exhibit Oswego and Syracuse Rail Joint" whether the holes in those joints were originally punched oblong or not, and give your reason for your opinion?

A. My opinion is they were not punched oblong; where the circle is out of round it has the unmistakeable evidence of being worn out of round.

Cross-examined by Mr. LAW:

65 46. X Q. Of what rolling-mill are you now superintendent at Richmond, Va., and how long have you been there?

A. Just now I am not engaged in any rolling-mill.

47. X Q. How long have you resided in Richmond, and what has been your business since you lived there?

A. I have resided there since July, 1870, and my business has been manager of the Tredegar Iron Works until 18th January, 1876. I have two horseshoe machines running at those works, and I am nearly every day at the works looking after those machines.

48. X Q. Were you general superintendent of the Albany Iron Works or of some particular department; and, if so, of what?

A. I was general superintendent of the Albany Iron Works from 1839 to 1870; there were some parts of the works let out by contract of which I did not have special care or charge of.

49. X Q. You say you made or directed the making while you were there of railroad clamps, and that this was "about the spring of 1847." Are you positive as to the year, and by what fact or circumstance do you fix the time when you say such clamps were made?

A. I am quite positive it was at that time from this fact; at the same time I fitted up those rolls for making the clamps I was engaged in fitting up rolls and machinery for the new steam-mill that was commenced that spring.

50. X Q. What data have you from which you fix the time of the commencement of the new mill as being in 1847, or do you speak from general recollection?

A. I speak from well-known history of the commencement and building of the steam-mill.

51. X Q. What is that well-known history; have you any data
66 or memoranda which fixes the date, or is your answer given from your recollection of that well-known history?

A. My answer is given from my knowledge of the well-known history; and I have no dates or memorandum with me—I have none anyway.

52. X Q. Then, your answer as to when that mill was commenced is founded upon your general recollection in respect thereto, is it not?

A. It is.

53. X Q. The order from Mr. Winslow in respect to the making the clamps you refer to, was it verbal or written?

A. It was both verbal and written. I had written orders for everything that was manufactured in rolling-mill.

54. X Q. Have you those orders now; and, if not, how long is it since you have seen them?

A. I have not them orders now, and don't know that I've seen them since the year they were made.

55. X Q. You say that it took about three months to make those clamps; what was done with the rolls by which they were made after they were finished?

A. They stood in the mill unoccupied for a year or more, and then they were taken down and put with the waste castings and probably worked up.

56. X Q. And you have not seen them, I suppose, since about the time they were taken down?

A. I don't remember when I last saw them. I don't know if I have ever seen them since they were taken down. Probably have seen them a good many times since, but can't say positively.

57. X Q. Your testimony, then, as to the length of the plugs in the rolls to make the impressions in the clamps, and the depth of the impressions made and the shape of the plugs, is founded upon your general recollection of what took place at the time those clamps were made, is it not?

A. It is.

67 58. X Q. Do you know what became of the wooden pattern you worked from in making those clamps, and whether the same is in existence now or not?

A. I do not know what became of the wooden pattern, or whether it is now in existence or not.

59. X Q. Do you know whether the written order you received as to making those clamps contained specific directions as to the form of the hole or not?

A. The written order referred to the wooden model or pattern; so many to be made according to the wooden pattern, according to my recollection.

60. X Q. Can you be positive that that was all the written order contained?

A. Very probably it was not all. It would be very likely to say where they were to go, and who they were for, on my order-book.

61. X Q. Can you state positively that your order-book did contain any such disposition of those clamps?

A. I cannot say for certain that it did.

62. X Q. Do you know, of your own knowledge, where the clamps were sent to after they were made?

A. Of course I did not see their destination, where they were left; I can testify, to the best of my knowledge, they were to go to the Oswego and Syracuse Railroad.

63. X Q. On what is that knowledge founded; on what you individually know, or what you heard from somebody else?

A. I might say, from what I individually know, I remember this circumstance better than any other, that happened at that time, from the fact it was a new thing I had never seen done before, and had to get up machinery especially to do it.

64. X Q. What had the fact it was a new thing to do with the railroad to which they were to go, whether to the Oswego and Syracuse Railroad or any other road?

68 A. I don't know of anything, except the two are associated together in my mind, and according to my best recollection what was written on my order book.

65. X Q. State what, according to your recollection, was written on your order-book as to the road for which those clamps were made, and whether you can be positive whether anything to that effect was on your order-book.

A. According to my best recollection, it stated where they were to go, and for whom, and that they were for Oswego and Syracuse Railroad, and so stated on order-book. I swear according to my best recollection.

66. X Q. Would your order-book be kept by the Albany Iron Works, or anybody else?

A. My order-book was kept at what they call the lower office, and they were not destroyed.

67. X Q. Should those order-books be in existence now; were such books preserved by the Albany Iron Works?

(Objected to as calling for the mere impressions of the witness, and not as to the facts within his knowledge.

Defendant's counsel states he does not ask for impression, but as to what was the fact with respect to such books during the time witness was superintendent, if he knows what the fact was.

Complainants' counsel then suggests that the question should be limited to the time within which the witness has sworn he was connected with the Albany Iron Works.)

A. I don't know why they shouldn't be in existence; I never saw any of them destroyed.

68. X Q. Such order-books were preserved by the Albany Iron Works, were they not?

A. They were, so far as I know.

69 69. X Q. Have you seen any of those clamps which you state were made at the Albany Iron Works in 1847 since the time they were made?

A. Not that I know of.

70. X Q. When first, after those clamps were made, was your attention particularly called to those clamps, and their construction?

A. About eight weeks since.

71. X Q. And during the past eight weeks you have had conversations about those clamps with the several witnesses who have been examined on part of complainants, have you not?

A. I have.

72. X Q. Have you examined during that time any books or written papers or memoranda as to such clamps, which books or papers were written at or about the time those clamps were made?

A. I have not.

73. X Q. About how many of such clamps were made at the Albany Iron Works at the time you mention; state as near as you can?

A. My recollection is there were a large quantity of them made, how many I cannot tell; I do not remember.

74. X Q. Can you give any opinion as to how many in weight or how many in number were made, or how many in pounds; was it as many as ten thousand, or five thousand, or fifteen thousand in number; state your impression as certain as you can from your connection with the making of the clamps and the time occupied in their making?

A. According to the best of my recollection, there were ten thousand pieces and more made at that time; it might have been twenty thousand.

75. X Q. Do you know how many of such clamps would be required for a mile of track?

A. That would depend altogether on the length of the rail.

70 76. X Q. Do you know whether the orders for those clamps, both verbal and written, specified the number of miles for which they were needed?

A. I don't remember; probably it did.

77. X Q. But you can't say that they did, can you?

A. I am not certain it was so specified.

78. X Q. What was the size and length of those rolls you had made for rolling those clamps?

A. The working diameter of those rolls was about eleven inches, and the length about twelve inches long—that is, in the body of the rolls; the necks and wabbler would increase the length to about three feet.

79. X Q. What kind of clamps were those next made at the Albany Iron Works?

A. They were very much like those made in 1847, except the holes were oblong in the clamps.

80. X Q. When were those made?

A. Since 1867—from 1867 to 1870. When I left they made large quantities at the Albany Iron Works.

81. X Q. What enables you to state that the clamps "Defendant's Exhibit Oswego and Syracuse Rail Joint" are similar in shape and size to those you made in 1847; anything except general recollection; if so, what?

A. Nothing but general recollection.

82. X Q. Have you been accustomed to notice the effect of wear and use upon clamps used for fastening together rails upon railroads?

A. I have.

83. X Q. To what extent, and for how long, and how has your attention been particularly directed to such examination?

A. I have frequently seen such clamps and bolts come to the Tredegar Works as scraps, together with other scrap-iron, and it was always my custom to examine such scraps as they came to the works to determine their quality and to determine for what they best could be used.

71 84. X Q. And your examination as to such clamps and the effect and wear and use upon them, has been made upon scrap-iron brought to the Tredegar Works, as I understand your last answer; am I correct?

A. It is; you are. That iron I refer to was fish-bars, worn out and condemned for some reason, and brought there in scraps.

85. X Q. And the extent of the wear of such clamps would, of course, depend upon the length of time they had been in use, would it not, and the quality of iron of which they were made?

A. In part it would, but principally it would depend on whether there was sufficient allowance made for the expansion and contraction of the rail.

86. X Q. Those fish-bars that you examined at the Tredegar Iron Works, did you know how long they had been in use, or how they had been used, and under what circumstances as to allowance for expansion and contraction?

A. I could not tell.

87. X Q. Do you know anything under what circumstances "Defendant's Exhibit Oswego and Syracuse Rail Joint" have been used, and for how long they have been used?

A. I don't know how long they have been used, but the circumstance is evident in my mind, not sufficient allowance made for contraction or expansion. I should add this, they lack more especially room for contraction as the holes are all worn in that direction, where they would bind as the rails shortened in the cold.

88. X Q. And you mean to be understood, do you, that in your opinion the holes in the clamps "Defendant's Exhibit Oswego and Syracuse Rail Joint" were originally made not oblong but round?

A. Round. Yes, sir; that is my opinion.

72 89. X Q. And that opinion is based upon your knowledge derived from the examination of clamps used on railroads, is it?

A. It is not. It is based on the examination and appearance of the holes in such exhibit.

90. X Q. You have no personal knowledge, as I understand you, to what road or place the clamps made at the Albany Iron Works in 1847 were sent after they were made?

A. I have no personal knowledge where they were unloaded. To the

best of my recollection I saw them loaded and shipped to the Oswego and Syracuse Railroad, and presume they went there, and it was part of my business to see that iron when ready should be shipped.

91. X Q. You are not positive, however, that they were shipped to that road, are you?

A. I could not say; I did not go with them.

92. X Q. Was it necessary to go with them in order to know what place they were shipped?

A. It would not be necessary to go with them to know to what place they were shipped; but I think I have already sworn, to the best of my recollection, they were shipped to that road.

93. X Q. (91. X Q. repeated.)

A. Nothing further than what I have said.

94. X Q. The books or papers of the Albany Iron Works would show to whom or to what road such clamps were shipped and when, would they not?

A. I think they would.

95. X Q. Have you looked at the books and papers of such company to find out when such clamps were made, and for what road, and how many, and when they were shipped?

A. I have not.

96. X Q. Have you made any effort to learn such facts from the books and papers of such company?

A. I have not.

73 Redirect by Mr. CRAMER:

97. Q. Was it the custom at the Albany Iron Works to enter on the order-book the names of parties for whom and the destination to which such orders were intended to go?

A. It was.

98. Q. Do you know of your own knowledge whether or not the order-book in which was entered the order for the clamps referred to in your testimony is now in existence?

A. I do not.

99. Q. Did you examine any scrap-iron returned to the Albany Iron Works in order to ascertain the effect of use and wear on iron?

A. I have; on cable-chains, for instance, and other kinds of chains; often find the links of such chains nearly worn off.

100. Q. Have you now any control over or access to the books and papers of the Albany Iron Works?

A. None whatever.

Recross by Mr. LAW:

101. X Q. Have you any reason to suppose, as you were the superintendent of those works for thirty-one years, that if you should make application to look at the books and papers of that company in connection with the making of those clamps in 1847 or thereabouts, that you would not be permitted to look at such books and papers to learn the particulars as to such clamps?

(Objected to as calling for the supposition of the witness, and not for facts.)

A. I am sure I couldn't tell whether they would allow me or not. I don't think they would let me do it now.

102. X Q. Why not?

(Same objection.)

74 A. The man who has control there now is not a friend of mine.

103. X Q. Is the man you refer to superintendent, or what and to whom do you refer?

A. He is superintendent now.

104. X Q. Are the owners of said works in any way hostile to you, so that you think they would refuse you such a request?

(Counsel for complainants objects to this exceedingly irregular cross-examination on the ground that it is totally immaterial to the case and unfair to the witness, and instructs the witness that he is at liberty to decline to answer the question should he see fit.

Counsel further says that he is perfectly willing to afford to the counsel for defendants all the information which he may desire on this head, but does not think it proper to encumber the record therewith.

Counsel for defendant considers the question pertinent, but seeks nothing unfair to the witness, and does not see how the question is so; and if the question is in any way pertinent, no explanation to the counsel personally by counsel for complainants could have any connection with the examination in the case.)

A. I prefer not to make any answer. I can hardly say yes or no. The owners that were there when I was there are dead, and it has changed hands.

JOHN H. SNYDER.

Subscribed and sworn before me this 4th day of April, 1877.

WILLIAM H. DELANCEY,
Special Examiner.

75 NEW YORK, *May* 15, 1877—11 a. m.

Parties met pursuant to notice. Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

Adjourned to May 16th, at 11 a. m.

MAY 16, 1877—11 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

ALANSON STRONG, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, residence, and occupation.

A. My name is Alanson Strong; my age is 66; my residence in the town of Franklin, Delaware Co.; I am a farmer.

2. Q. How long have you resided in Franklin?

A. All my life. I was born there.

3. Q. Do you know Asa Johnson, one of the complainants in this suit; and, if so, how long have you known him?

A. I know him and have known him well since he was a small boy; I can't say how long.

4. Q. Do you know where Asa Johnson resided in the year 1843?

A. I do; he resided with his father in the town of Franklin.

76 5. Q. In the year 1843 did you have any conversation with Mr. Johnson in regard to inventions or patents; if so, state what it was, and under what circumstances?

A. In the spring of 1843 I helped his father to do some ploughing. I had but a short time before moved on a new farm, where I cut but little hay. That spring of 1843 I was short of hay to feed one cow and a pair of oxen; that was all the stock I had then on the new place. Asa's father told me if I would go there and help them to plough he would let me have some hay to help me through. At noon, after he

had put out one team, Asa and I met in the wood-house; he showed me a model he had been making, and explained it so I would understand the working of it. He said that he intended to get it patented. I think I encourage him in it after understanding the thing.

6. Q. You say that he showed you a model he had been making and explained it; please state, as nearly as you remember, what was his explanation.

A. The explanation was to allow for the contraction and expansion of iron rails for railroads.

7. Q. Did he tell you how his attention had been drawn to the subject?

A. I think he did. While lying on the bed in the chamber in the old house, where he could look at the roof of the house, he noticed the nails would work loose, and he laid it to the heat and cold affecting the roof; that is all I think of now.

8. Q. Look at the model now shown you and state if you recognize it as the model which Asa Johnson showed to you at the time in 1843.

(Objected to, as the witness has not been asked to describe the alleged invention of Johnson, or what it was, and how it operated.)

77 A. I could not swear positive that it was the same model; but the one he showed me had bolts in it through the holes, two I think, one in each end. Those bolts did not fill the holes tight; they were round bolts. The bolts could move back and forth.

9. Q. From your recollection of the model shown you in 1843 are you able to state that this model now produced is the same, in general size and shape, with the exception of the bolts, you have referred to?

(Objected to as leading.)

A. Yes, sir.

(Model is offered in evidence, and marked Complainants' Exhibit Johnson Model, 1843, W. H. DeL., sp'l ex'r.)

10. Q. Did you have any other conversation with Asa Johnson in regard to his said invention at or about that time?

A. I could not say positive. I might and I might not.

11. Q. How are you able to fix the date of the conversation to which you have testified?

A. From the fact that I was then at work for his father, and so was Asa; and I know it was the last summer he worked for his father before he was twenty-one.

12. Q. Was that the only time you worked for his father with Asa?

A. I had worked for his father years before with Asa, but not after.

13. Q. Do you know when Asa Johnson left the town of Franklin; if so, when was it?

A. He left the town of Franklin, I think, the last day of March—it might have been the 1st day of April—1847.

14. Q. Do you know when he left his father's farm; if so, when was it?

78 A. He left the old farm—part of it had been his—and came to live with me in the spring of 1846.

15. Q. How long did he remain with you?

A. He made it his home with me the most of the time; through the summer he was gone some of the time, but made that his home until, I think, in September, he was married. I cannot be positive it was September, but that is my impression. In September he was married.

16. Q. Do you know whether Asa Johnson has resided in the town of Franklin since he left there in 1847?

A. He has not to make a residence there; he has been there.

17. Q. How many times has he been there, to your knowledge?

A. He may have come back a few days after he left for another load of things, and may not; I rather think not. He came there again, I should think, about twenty years ago; he stayed only two or three days. I never knew of him being there again until a year ago last spring; the exact time a year ago last spring I could not state; I think perhaps it was in April; I judge by the weather.

18. Q. Have you seen the model since Asa Johnson showed it to you in 1843?

A. Not until a short time ago; I can't say exactly when. I want to correct a little the last answer; he was in Franklin last spring, some few months ago.

19. Q. You have described certain bolts as being inserted in the holes of the model Complainants' Exhibit Johnson Model, 1843, or the model shown you by Johnson in 1843; please look at the bolt now shown you, and state if you recognize it as being one of the bolts referred to.

(Objected to, as witness has not been first asked to describe what the bolts were or how made which he says he saw in 1843.)

79 A. I could not swear positive that it was the bolt, but like it; like the one I saw in 1843.

20. Q. You say that there were two bolts in the model which was shown you; please state in which of the holes the two bolts were placed.

A. My impression is one each end in the hole in each end.

21. Q. Did anything pass through the other holes?

A. I think not.

22. Q. Are you related to Asa Johnson; if so, how?

A. My wife is his sister.

(Bolt referred to by witness in Q. 19 is offered in evidence, and marked Complainants' Exhibit Johnson Bolt, 1843, W. H. DeL., sp'l ex'r.)

Cross-examined by Mr. LAW:

23. X Q. How many holes were there through the model Johnson showed you?

A. There were four places for bolts to go through.

24. X Q. Are you positive about that?

A. I am.

25. X Q. Where was this home and wood-house where you were shown this model; in what part of the town of Franklin?

A. About four miles and a half from the village, on the old Walton road, so called, nearly south from the village.

26. X Q. Was that house at that time an old house or a comparatively new one?

A. Considerable of an old house at that time.

27. X Q. Is it standing yet?

A. Yes, sir.

28. X Q. What kind of roof had it in 1843?

A. It was a shingle roof.

29. X Q. Where was the farm you occupied then which was comparatively new?

80 A. About half a mile from this house last described, and further on towards Walton.

30. X Q. Was there a farmer near by or in that neighborhood, at or about that time, by the name of Henley?

(Objected to as immaterial.)

A. I should think not. I never knew any one of that name in the neighborhood.

31. X Q. How long had you been on that farm at the time you saw this model?

A. About two years.

32. X Q. How long before that time was it that you had worked for Mr. Johnson's father?

A. I worked there some of the time in 1830. I think I worked for him some after 1830 and before 1843. There was one year after 1830 that Griswold Johnson and I took the farm. I can't recall the year.

33. X Q. Is Mr. Johnson's father now alive, and what was his name?

A. No, sir. His name was Ira.

34. X Q. Had Mr. Johnson other children besides Asa, and, if so, how many?

A. Yes. Three besides Asa. Four in all.

35. X Q. Are any of them now alive, and, if so, how many, and where do they live?

A. For aught I know they are all alive. The oldest, my wife, Eliza, lives with me; the next, Griswold Johnson, lives on the old farm; the next, Asa, lives in Greene Co.; the next, Clarissa, I don't know positive where she lives. I have not heard from her in two years I should think. She then lived in Meadville, Pa. She was married before she left home to Hobart Niles.

36. X Q. What, if anything, is there in connection with the model Asa Johnson showed you in Franklin which enables you to fix the year, when he showed it to you?

81 A. Nothing in particular in connection with the model, that I know of.

37. X Q. How long did that conversation last at which he showed you the model?

A. Could not tell exactly how long, but it was after we had put out our team at noon, and before we sat down to dinner.

38. X Q. And did you see that model at any other time?

A. Not until this spring.

39. X Q. Do you know whether Asa Johnson put his invention in use about or soon after he showed you that model, and, if so, when and where?

A. I think he did not until some time after.

40. X Q. Do you know anything about that; I do not ask you what you think?

A. I do not, only what he told me.

41. X Q. When did he put it into use, to your knowledge, and where?

A. I don't know.

42. X Q. When he showed you that model did he tell you how he intended to use his invention to allow for the contraction and expansion of rails on railroads; state what he said, giving his words as near as possible?

A. He told me that he intended to get it patented after perfecting another part of it for using on metallic roofing, all under one patent.

43. X Q. Now please hear read the last question, and answer that——

A. He explained by showing how it would work in fastening the ends of rails with a movable bolt, allowing it to expand or contract, and still hold the rails in their places.

44. X Q. Is your last answer what he then told you?

A. I think it is.

45. X Q. Did he say anything as to how the ends of the rails were to be made to use his invention?

82 A. I think he told me the ends of the rails would have holes through them to receive the bolts.

46. X Q. Are you positive he so told you?

A. I think I am, from the fact that I understood the working of it.

47. X Q. How old was Asa Johnson at that time?

A. It was the spring before he was twenty-one.

48. X Q. Do you know of your own knowledge when he was born, or when he would become twenty-one, or only know that from what you were told by some one?

A. I do not know of my own knowledge.

49. X Q. Had Asa Johnson up to that time lived in Franklin?

A. I think he had; I don't know anything to the contrary.

50. X Q. You say he owned a part of the farm what portion of it?

A. His father gave him a deed of part of the farm after they called him of age; I could not tell exactly how many acres. Still, I saw the deed, but I don't recollect.

51. X Q. How large was the farm in the whole?

A. I think in the neighborhood of 300 acres; I can't say exactly.

52. X Q. State as near as you can recollect about how much he had, whether one-quarter or less or more?

A. I think somewhere between 50 and 70 acres he had; I own a part of that now.

53. X Q. How are you able to fix the time when Asa Johnson left the old farm, from recollection, or how?

A. A circumstance that happened while he lived with me; the month of June or July, while he and I were making beehives in the wood-house, a little child of mine born the September before, just large

83 enough to pull herself up by things, and my wife had a tub partly filled with water standing on a chair turned down, pulled the tub over and the water went over her.

54. X Q. How can you say that happened in 1846?

A. The child was born in September, 1845.

55. X Q. And can you be positively certain that this circumstance happened before the child was one year old, or the next year after the child had become a year old?

A. I think I can, from the fact that the child could not walk at that time.

56. X Q. And how long was it after this circumstance that Asa Johnson left Franklin?

A. He left Franklin the next spring, after near the first of April.

57. X Q. Was the model Asa Johnson showed you, and the bolts that were in it, in all respects identically the same as the model and bolt now put in evidence, and, if there was any difference whatever between the models and the bolts he showed you and those now produced, state what it is?

A. I cannot say it is identically the same, neither can I say it is not identically the same. If it is not identically the same, I cannot tell in what respects it differs.

58. X Q. Can you positively state whether in that model he showed you there were just four holes, or more or less than four?

A. I have a very strong impression there were just four holes, no more and no less—I cannot be positive.

59. X Q. Can you say, from your recollection of that model which you saw but once, and without any assistance from the model now pro-

duced or from consultation lately held with any person or persons as to that old model, what was the length or size of the holes as compared with the size of the bolts?

84 A. After having him explain the model, it was so impressed on my mind and memory that the size, shape, and principle of the working of it, that I have retained it and thought it over. As far as the oblong holes is concerned, which allowed the bolt to move, so far it has been fresh in my mind all the while. As to the exact size and the exact shape I could not be positive, but the working of it from my recollection of seeing it at that time is the same.

60. X Q. You have lately, or within the last few months, talked over this old model with Mr. Johnson and others, I suppose, have you not?

A. Yes, sir; some.

Redirect:

61. Q. Do you know when Asa Johnson was married, and, if so, state when?

A. I know he was courting his wife the summer he lived with me, and brought his wife there to visit in September, I should think, but can't be positive—in 1846 I mean.

62. Q. Did he leave Franklin permanently before or after his marriage?

A. He lived in Franklin Village through the winter of 1846–'47, until about April 1, then he left Franklin permanently.

ALANSON STRONG.

Sworn and subscribed before me this 16th day of May, 1877.

WILLIAM H. DELANCY,
Special Examiner.

GRISWOLD JOHNSON, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, residence, and occupation.

A. My name is Griswold Johnson; my age, sixty-three; my residence, town of Franklin, Delaware County, New York; I am a farmer.

85 2. Q. Are you related to Asa Johnson, one of the complainants in this suit, and, if so, how?

A. We are brothers.

3. Q. How long have you resided in Franklin?

A. Since 1817.

4. Q. Where did you reside in Franklin in the year 1843?

A. About four or four and a half miles from Franklin Village, on the Walton road, on my father's farm.

5. Q. Did your brother Asa also reside there at that time?

A. He did.

6. Q. Do you recollect having any conversation at that time with him and Alanson Strong in regard to any patents or invention; if so, what was the conversation?

A. Mr. Strong and myself were ploughing in the spring, and at noon, when we turned out our team, Mr. Strong and my brother were standing under the wood-house talking, and he had a model in his hand—my brother had. He told what it was for, for what purpose he made it—it was to connect the ends of rails on railroads. He at that time stated about the shape of it, and the holes that were in it—the bolts being two, and holes for two more. The holes in this model were oblong holes, allowing for the bolt to pass through it, to slide back and forth,

not being stationary. The exact conversation that was passed at that time was that he thought of getting it patented; he thought he had got a pretty good thing. That was pretty much all the conversation I recollect at that time.

7. Q. Please describe as nearly as you can recollect the size and shape of the model which Asa then showed you.

A. The shape of it was to fit the end of rails, with four holes
86 through it, or place for four bolts—there being two in it at the time, I think in the end holes; not measuring it, I could not give the exact length; I should say it was from four to six inches long, and the bottom of it might have been three inches.

8. Q. Look at the model now shown you, which is marked "Complainants' Exhibit Johnson Model, 1843," and the bolt, which is marked "Johnson Bolt, 1843," and state whether or not you recognize it as the model which Asa Johnson showed you at that time.

A. I should call it the same.

9. Q. Do you think that the bottom of this model is three inches wide?

(Objected to as improper, in view of the testimony of the witness already given, and as suggestive.)

A. It does not have that appearance quite.

10. Q. When and where next did you see this model, if at all?

A. I see it in the wood-house chamber, on the old homestead; I was looking for other things and I come across it and took it in my hands and looked at it; that was about fifteen years ago.

11. Q. What did you then do with it?

A. After looking at it I put it back where I found it.

12. Q. Was any one present at the time you saw it about fifteen years ago?

A. I think Mr. Strong's son, Ira Strong, was present; he was working for me that season.

13. Q. When did you next see the model?

A. Something like a year ago. When my brother came to Franklin, he asked me the question whether that old model was then in being or not; I told him that I thought it was, and where he would find it; I went with him and he found it where I had left it.

87 14. Q. Did he then take it away with him?

A. He did.

15. Q. Do you recognize the model which is in evidence as the one which you saw in the wood-shed fifteen years ago, and also as the one which you and Asa found, and which Asa took away?

A. I take it to be the same; it has that appearance.

16. Q. Is there anything about the model by which you can recognize it; if so, what?

A. There is irregularities about it which I noticed when I found it in the wood-house; the bottom part I noticed as not being smooth, being rough; and also these holes not being true, the bottom part not on a true line.

17. Q. When you saw the model in 1843 was it in the same condition as it now is; if not, how did it differ?

A. It was not as rusty; it looked more new.

18. Q. How do you fix the date of your first seeing this model?

A. From papers that I have, business transactions, deeds that were given, one in 1844, and another in 1845; this being before he was of age. Father give each of us, my brother and myself, separate deeds

for a part of the old homestead; we worked the farm together for two summers and one winter; then I bought his rights; he sold it to me.

(Counsel for the defendant asks for the production of the deeds referred to.

Counsel for complainants offers in evidence deed, dated March 23, 1844, from Ira Johnson and Dolly, his wife, to Griswold Johnson, of certain property situated in the town of Franklin, Delaware Co., marked "Complainants' Exhibit Johnson Deed No. 1, W. H. DeL., sep'l ex'r," and deed dated 27 Nov., 1845, from Asa Johnson to Griswold
88 Johnson, of another portion of same property, marked "Complainants' Exhibit Johnson Deed No. 2.")

19. Q. When did Asa Johnson come of age?

A. In the fall of 1843.

20. Q. Did this conversation to which you have testified take place before or after Asa came of age?

A. Before he came of age.

21. Q. What is the consideration named in the deed of Asa Johnson to you?

A. Five hundred dollars.

22. Q. Was that all the consideration you gave him for his portion of the farm?

A. I gave him fourteen hundred dollars, including that.

23. Q. How did you pay this money?

A. I gave him notes and a mortgage to the amount of seven hundred, and my own obligation for the remainder.

24. Q. How long had the notes and the mortgage to run, and how long was it before you paid him your obligations?

A. The notes had about five years to run, and my obligation fourteen years.

25. Q. When did Asa leave the town of Franklin permanently, if you know?

A. In the spring of 1847.

26. Q. Do you know where he went after he had deeded his portion of the farm to you, and before he left Franklin?

A. He went to board with Mr. Strong—Mr. Alanson Strong.

27. Q. After he left Franklin, in the spring of 1847, when first did he return there on a visit, or otherwise, to your knowledge?

A. It was nearly twenty years after.

28. Q. When he returned where did he stop, and how long?

89 A. He stopped at my father's house. I am not positive whether he went to Mr. Strong's or not; can't say. He stopped but a very few days; a short time.

29. Q. When did he next visit Franklin?

A. A year ago.

30. Q. Was that when he came for the model?

A. Yes, sir.

31. Q. How long has your father been dead?

A. Five years the first of this month.

32. Q. Did he occupy the homestead to which the wood-shed is attached up to the time of his death?

A. He did.

33. Q. Has any one occupied it since his death?

A. No one but myself.

34. Q. Are you residing there now?

A. I am residing at the old homestead now.

35. Q. You say that about 15 years ago you found the model of which

you have testified; please state in what part of the wood-shed you found it; describe the place particularly.

A. It was lying on the plate, there being a beam under the plate, and there being a board dovetailed into the plate and into the beam to hold the plate and beam together.

36. Q. Was the model in such a position that it could be seen by any one entering the wood-shed?

A. They would not be very apt to see it, it lying behind this board, and also the foot of one of the rafters, lying in such a position that one would not be very apt to see it without taking particular notice.

37. Q. After you had looked at the model did you return it to the same place where you found it, or how?

A. I did, putting it in a little more secure place, a little more out of sight than where I found it.

90 38. Q. When you went to look for the model with Asa did you find it in the same place where you had put it?

A. I told him where I had left it. He went and got it himself.

39. Q. Since that time have you seen this model, and, if so, when and where?

A. I have seen it in Franklin, some few weeks ago, in Asa's possession.

40. Q. Do you know when Asa was married, and, if so, when?

A. I think it was in the fall of 1846.

41. Q. Was it before or after he left Franklin?

A. It was before he left Franklin.

Cross-examined by Mr. LAW:

42. X Q. How long did that interview and conversation last before you went to dinner, when you first saw that model?

A. But a short time.

43. X Q. Half an hour?

A. I think not.

44. X Q. Quarter of an hour?

A. It might.

45. X Q. What was that model made of?

A. It was made of a piece of sheet-iron.

46. X Q. You have stated that the bottom of it might have been three inches wide; was not that model large enough to fit over the end of a rail?

A. I don't think it was. I was mistaken; it was mere guess-work as to the width. I never measured it.

47. X Q. When you stated that the bottom of it was three inches inside you were as confident of that as of other portions of it you have described?

A. No, sir; I was not. I had to guess at it. I never measured it.

48. X Q. You guessed at the length of it, too, did you not?

A. I did.

91 49. X Q. If you had not seen that model at any time except when Asa showed it to you in the wood-house could you be positive how many holes there were in it from recollection of what occurred at that time when you first saw it?

A. I could.

59. X Q. How would you be able to be positive as to the number of holes when you would have to guess at its length and breadth?

A. There being two bolts, both through it, I noticed the place for two more; that was stamped upon my mind.

60. X Q. And you are positive that you first saw it in 1843, are you?
A. I am positive.
61. X Q. You say you fix that time, 1843, from the two deeds you have presented, one given in 1844 and one in 1845; how are you able to say it was not a year before the last deed was given that you first saw the model?
A. From the fact that we worked the place together, my brother and I, and that Mr. Strong was working for my father at the time, this being before my brother was of age.
62. X Q. You have talked with Mr. Strong, I suppose, lately, as to the time when you first saw this model in the wood-house?
A. We have had some conversation on that subject.
63. X Q. And the fact that Mr. Strong worked for your father has no connection with this model, has it?
A. I think it has.
64. X Q. What?
A. That was the time that I first saw it in my brother's hands.
65. X Q. And you did not see that model again until you found it in the wood-house, fifteen years ago, did you?
A. I did not.
92 66. X Q. Did your brother again describe it after that time when he first showed it to you?
A. He never has.
67. X Q. When you found the model in the wood-house fifteen years ago how many bolts, if any, were in it then?
A. Two.
68. X Q. If that model was placed in such a position in the wood-house that one would not be apt to see it, how came you to find it?
A. There being no permanent floor near where it was placed, we generally kept a lot of loose boards lying on the beam where it was placed, and we often kept a ten-foot pole lying on those beams or boards. I was after the ten-foot pole when I found it.
69. X Q. Were the bolts in the model at that time, or by the side of it?
A. They were in it; I think in the end holes.
70. X Q. Are you positive that the model you found in the wood-house about fifteen years ago is the identical one your brother showed you at the previous time, just before you went to dinner?
A. I believe it to be the one.
71. X Q. Did your brother come out to Franklin, a year ago this spring, for the purpose of finding that model, if you know?
A. I think that was his business, or part of it.
72. X Q. And you have had conversation with him about that model, have you not, since that time, or near or at that time?
A. We have had some conversation about it.

Redirect:

73. Q. Does your recollection of the model which your brother showed you in 1843 relate more to the general appearance, or to the size of its different parts?
A. Well, its general appearance is the same; it looks to me now as it did then.
93 74. Q. Did you have the model in your hands when you first saw it?
A. I did not.
75. Q. From the time that your father deeded you a portion of the farm to the time that Asa deeded you the other portion, and you and

Asa were working the farm together, did Mr. Strong do any work for you on the farm?

A. I think not.

Recross:

76. X Q. If you had had lately no conversation with your brother and Mr. Strong as to this model which you saw in 1843, your recollection would be less distinct and clear about it, would it not?

A. I don't think it would make any difference.

GRISWOLD JOHNSON,

Subscribed and sworn before me, this 16th day of May, 1877.

WILLIAM H. DELANCEY,
Special Examiner.

NEW YORK, *May* 17, 1877—11 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

CLARISSA AMANDA JOHNSON, a witness produced on part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, and residence.

A. My name is Clarissa Amanda Johnson; my age is forty-seven; residence, Centreville, Greene Co., N. Y.

94 2. Q. Are you related to Asa Johnson, one of the complainants in this suit, and, if so, how?

A. I am; I am his wife.

3. Q. When and where were you married to him?

A. On the 14th September, 1846, at the town of Franklin, Delaware County.

4. Q. How long did you reside in Franklin after your marriage?

A. Until the following spring.

5. Q. Where, and when did you move?

A. On the last day of March or first day of April, 1847, to town of Cairo, Greene Co.

6. Q. While you were at Franklin did you have any conversation with your husband in regard to any invention? If so, state what it was, and under what circumstances it occurred.

A. I did. On our return from Auburn, N. Y., where we had been to attend the State fair. Mr. Johnson purchased, while there, a patent washing-machine. In speaking of that he told me that he had an invention of his own that he called on adjustable fastener, for fastening metals in all places where the contraction and expansion required accommodation, which he thought was a valuable invention, especially for railroad rails where the roads were many miles long, and he intended to patent it.

7. Q. Please state the exact time when you went to Auburn to the State fair, and when you returned.

A. We went on the morning of the 14th September, 1846, and returned on Saturday of the same week.

8. Q What circumstance enables you to recall the date of the time of your starting for Auburn?

A. It was on the occasion of our marriage. We were married on that day.

95 9. Q. Was this your wedding trip?

A. It was.

10. Q. After this time, and prior to your departure from Franklin, were there any further conversation on this subject, that you recall?

A. I do not recollect of any.

11. Q. When you went to Cairo where did you reside?

A. In or near the little village of Acra, in the town of Cairo.

12. Q. Did Mr. Johnson own any property there, or how?

A. He did; he owned a farm.

13. Q. Do you know when he purchased the farm; if so, when?

A. Yes; he went out the previous winter, taking me with him, and got the refusal of the farm from the owner.

14. Q. Do you know how much he was to pay for it; if so, how much?

A. I am not positive, but I have the impression that it was one thousand dollars.

(All the evidence of this witness as to what Mr. Johnson did objected to as not being the best evidence as to such matters, and therefore is not admissible.)

15. Q. After you went to live at Cairo did you have any further conversation with your husband in regard to his invention at any time?

A. I must have had, frequently.

16. Q. Why?

A. Because he was all the time inventing, and speaking about it, and having drawings and models about the house.

17. Q. Do you recollect any particular model?

A. I do.

18. Q. State what the model was; what was the shape of it?

96 A. It was a piece of metal, consisting of a bottom plate and slotted side flanges or plates, through which adjustable bolts passed.

19. Q. You say he was in the habit of making drawings; did you see any of those drawings yourself?

A. I did.

20. Q. Do you recollect the time when you left Cairo; if so, when was it?

A. It must have been nearly twenty years ago; I don't recollect exactly.

21. Q. Do you know whether or not Mr. Johnson was financially embarrassed or otherwise during the period of your sojourn at Cairo?

(Same objection as to Q. 14.)

A. I do; he was very much so.

Cross-examined by Mr. LAW:

22. X Q. When Mr. Johnson, on your return from your wedding trip, told you about his adjustable fastener, was it after you got back to Franklin or on your way back?

A. It was on our way back.

23. X Q. Did he describe his invention any more particularly than you have testified at that time?

A. I think not. I tried to make it as plain as I could.

24. X Q. How long after you went to Cairo was it that you saw the model you have described of the metal bottom plate with slotted side plates?

A. I could not tell exactly, but directly after we went to housekeeping.

25. X Q. When did you go to housekeeping in Cairo?

A. On the first of April, 1847; as soon as we arrived there.

26. X Q. Now, try to state more particularly how long it was

97 after you went to housekeeping that you saw that model,

whether it was one month, three months, six months, or how long after.

A. I have nothing to guide me; it must have been while we were unpacking our things.

27. X Q. And did you see this model or find it as you were unpacking your things?

A. I saw it, but I think Mr. Johnson unpacked the things; I saw it directly after they were unpacked.

28. X Q. Was Mr. Johnson present when you saw it at that time?

A. He must have been.

29. X Q. Why must he have been present; could not you have seen it except he was present?

A. I suppose so; but I didn't have anything to do with his things.

30. X Q. Can you state positively whether you saw that model at that time while he was unpacking his things, or after they were unpacked?

A. No; I cannot.

31. X Q. And you cannot state positively, can you, whether Mr. Johnson was actually present at that time when you saw that model?

A. I do not remember.

32. X Q. When next after that time did you see that model again, if ever?

A. I cannot tell—many times I saw models similar—I cannot say whether it was that model.

33. X Q. How long after that time when you first saw that model at Cairo was it that you saw it again *as* a model similar to it; state the time as exactly as you can how many months or years it was?

A. I have no means of fixing any date; I have no means of recollecting.

34. X Q. You say Mr. Johnson was all the time inventing, having models and drawings about the house; did he make any other inventions besides the fastener; and, if so, what were they?

98 (Counsel for complainants interposes the same objection to this question as that which was made by defendant's counsel to Q. 14.)

A. He did. I recollect his making a metal house and a machine for making metal cornice or gutters. I do not recollect any others. These were in connection with the fastener in some way. I cannot explain it.

35. X Q. And when you moved from Cairo did you go to Centreville?

A. No, sir.

36. X Q. You say Mr. Johnson, while he was at Cairo, was very much financially embarrassed. Do you know to what extent, or what do you mean by very much, and state how he became so embarrassed?

A. He bargained for his farm and was not able to pay for it; he mortgaged it, and he was never able to extricate himself from the debt.

37. X Q. Did he make any invention to your knowledge, while he was at Cairo, besides this one of the adjustable fastener, for which he got any patents?

A. No, sir; not to my recollection.

CLARISSA AMANDA JOHNSON.

Subscribed and sworn before me, this 17th day of May, 1877.

WILLIAM H. DELANCEY,
Special Examiner.

s el for complainants offer in evidence a certified copy of the file-wrapper and contents in the matter of letters patent granted Asa Johnson, assignor to Johnson, Link & Higbie, dated May 19, 1857, No. 17331, for the improved mode of fastening sheet-metal on roofs, &c., which is marked "Complainants' Exhibit Johnson Application, W. H. DeL., sp'l ex'r.")

99 ASA JOHNSON, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, residence, and occupation.

A. My name is Asa Johnson; my age, fifty-four; my residence is at Centreville, town of Durham, N. Y.; my occupation, an inventor.

2. Q. Are you one of the complainants in this suit?

A. I am.

3. Q. Are you the patentee of the invention known as an "improvement in fastening sheet-metal to roofs," for which reissued letters patent No. 4870 were granted April 16th, 1872, and on which this suit is brought?

A. I am.

4. Q. Have you given any attention to the subject of fastening metals together having special reference to provision for expansion and contraction of the same; if so, when did you first direct you attention to the subject?

A. I have given attention to it; I don't known that I could state the exact time my attention was first called to it; it was while I was living home with my father, in Franklin, Delaware Co.

5. Q. When did you leave the home of your father?

A. I think it was in 1846 that I left there and went to boarding to Mr. Strong's; I think it was in the spring of 1846.

6. Q. How long prior to this time was it that you paid attention to the subject of fastening metals?

A. Well, it was probably four or five years.

7. Q. After your attention was directed to this subject when did it first take practical shape, either by making drawings or construction of models or in any other way?

A. I made a model in 1843, also drawings in 1843.

100 8. Q. Please state what time in 1843 you made the model; also what time you made the drawings; and, if more than one drawing, how many?

A. It was in the spring of 1843 I made the model; also made drawings, some of them, in April, 1843.

9. Q. Please describe the model which you made in the spring of 1843.

A. It consisted of a bottom and two slotted side plates having four holes, four slots or oblong holes on each side, making four holes or slots through the model, and two round bolts with nuts and heads placed in those slots so that they could move longitudinally in those slots.

10. Q. Do you recollect in which of the slots the bolts were placed?

A. I think they were placed in the two outer holes, one on each end.

11. Q. What was the size of that model?

A. I could not tell the exact size; about six inches or thereabouts long and probably an inch and a half or thereabouts wide, as near as I can judge.

12. Q. Was it as wide at the top as at the bottom?

A. It was not.

13. Q. Why not?

A. It had hollow flanges projecting out on each side at the bottom. The top was made to represent the width of a railroad rail at the center

of the rail, and the bottom flanges were wide enough to allow the flanges of the rail which were to project out on each side to slide in those hollow flanges of the bottom and side plates.

14. Q. Do you mean to say that this model represented the real width of a railroad rail, or how?

A. It was made the same shape as a railroad rail, but the model was much smaller than a full-sized railroad rail—I mean this model;
101 that it was the same shape as a railroad rail, except the top of the rail which was to project over the top of the side plates of the model.

15. Q. Look at the models now shown you, marked respectively "Complainants' Exhibits Johnson Model, 1843," and "Johnson Bolt, 1843," and state whether or not they are the models of the side plate, bottom plate, and bolt which you made in 1843.

A. They are.

16. Q. After you had made this model did you show it to any one, or describe it to any one; if so, when, and to whom?

A. I did show it to Alanson Strong and Griswold Johnson, my brother, in the spring of 1843, also described it to them—the principle of its working.

17. Q. How long after you had made it was it that you showed it to Mr. Strong and Griswold Johnson?

A. I do not know that I could say the exact day that I showed it, but it was soon after I made it.

18. Q. State the circumstances, as nearly as you can recollect them, under which you showed this model to those two persons.

A. I know that Mr. Strong was ploughing for father that day, and that at noon I showed them this model.

19. Q. Did you have any conversation with them at that time; if so, what and how long did it last?

A. I did have a conversation. I explained the principle of the working of the model to them; told them I thought it was a good thing and intended to patent it, or words to that effect; the exact words that were used I could not say; that was the subject of the conversation—the principle of its working, that those adjustable bolts were to move in those slots in the side plates to allow the rail to move between the flanges to accommodate expansion and contraction of the rail. I could not
102 say exactly how long the conversation lasted; it might have lasted a quarter of an hour, more or less. I can't say exactly.

20. Q. Did you have any other conversation with Griswold Johnson and Strong in regard to this model besides the one you have already mentioned?

A. I have.

21. Q. When?

A. Yesterday, last night, after they said they got through.

22. Q. I am referring now to the time you were at Franklin: had you any other conversation with them in this regard at that time?

A. I don't recollect any at present. I might have had and might not.

23. Q. What is your best recollection on the subject?

A. I said I don't recollect of any at present, though I might have had. I don't recollect of any at present.

24. Q. You say that you made some drawings illustrating your invention in 1843; please state when and where you made such drawings, and what kind of drawings they were.

A. I made them at father's house, in Franklin. The first were in

April, 1843, and the last were in November, 1845. The first I made, in April, 1843, represented my adjustable fastener, as I proposed to use it on railroads, and the last, in 1845, represented them as I proposed to use them on roofs of buildings.

25. Q. Have you any of these drawings it? If so, please produce them.

A. I have, and I produce them.

26. Q. Please state which of these drawings were made in 1843 and which in 1845.

A. Those two, one on fly-leaf in front of books (Works of John Newton, vol. 5, published in 1808), and the other on the first fly-leaf at the back of such book, were made in 1843. And one on the last fly-
103 leaf, at the back of such book, was made in November, 1845. The detached drawings were both made in November, 1845.

(The various drawings are offered in evidence, and marked as follows:

"Complainants' Exhibit Johnson Drawing, 1843, No. 1" (being the one on the front fly-leaf of the book); and "Complainants' Exhibit Johnson Drawing, 1843, No. 2" (being the one on the first fly-leaf at back of the book); "Complainants' Exhibit Johnson Drawing, 1845, No. 3" (being the one on the last fly-leaf at the back of the book); "Complainants' Exhibit Johnson Drawing 1845, No. 4 and No. 5" (being the detached drawings).)

(Here follow 5 diagrams marked pages 104, 105, 106, 107, & 108.)

27. Q. On "Complainants' Exhibit Johnson Drawing, 1843, No. 1," there appear the figures "1843"; please state in whose handwriting those figures are, and when they were placed there.

A. There are in my handwriting, and placed there at the time the drawing was made.

28. Q. On the other drawings there also appear certain figures and writing; please state in whose handwriting they are, and when they were so placed.

A. They are in my handwriting, and were placed there at the time I made the drawings.

29. Q. Were these drawings made at the different dates which are marked upon them?

A. They were.

30. Q. On "Complainants' Exhibit Johnson Drawing, 1845, No. 5," there appears the following statement:

"FRANKLIN, *Nov.*, 1845.

"Fig. one shows the adjustable fasteners, as I intend to make them, for connecting railroad rails; and figure two are for fastening metal on roofs of buildings.

"ASA JOHNSON."

109 and the figures are marked respectively Fig. one and Fig. two. Please state whether the words and figures are in your handwriting; whether the signature is yours; and when that note, signature, and so forth, was placed on such drawing.

A. The writing, figures, and signature are in my handwriting, and were placed there at the time I made the drawing.

31. Q. Was that drawing made at the date which is written on the face of it?

A. It was.

32. Q. How do you fix the date of the construction of the models "Complainants' Exhibits Johnson Model and Bolt, 1843"?

A. I know that I made them before I was of age, while I lived at father's, and before I showed them to Alanson Strong and Griswold Johnson.

33. Q. State if you afterwards constructed any model while you were at Franklin of a similar nature to the one which you have already described.

A. I probably made other imperfect ones; whether I completed any others while I lived there I cannot say.

34. Q. Are the drawings which you have produced all that you made while you were at Franklin?

A. I presume not; probably I made other drawings that were not perfect.

35. Q. Are they all which you now have in your possession?

A. There may be some others and may not.

36. Q. How was your attention first directed to the subject of fastening metals so as to provide for their natural expansion and contraction?

A. My attention was first directed to the subject of the invention by the difficulty there was in keeping roofs tight, and by seeing the wagon tires set and seeing the wheels spoilt by the expansion and con-
110 traction of the tire. When the tires were hot and first placed over the wheels they would be some distance from the wheel, and as they cooled they would gradually draw closer to the wheel until they became tight. Then when cold weather came in the winter they would contract still more, and commence crushing the wheels and spring the spokes. The next summer, when hot weather came, they would again become loose from expansion, and require shortening, and when cold weather came again they would shrink still more, until in a few years the wheels were spoiled. And also by hearing father and others talking about the great objections there were to the use of metals for roofs and other purposes where they required fastening, on account of the contraction and expansion of the metals. Father said if that objection could be overcome it would be the best material there was for roofs and other purposes. If some invention could be made that would obviate that difficulty it would be a good thing. Then while lying in bed under the roof in father's chamber, thinking about it, and seeing the nails stick down through the roof boards, an idea occurred to me that if those nails could only move with the material through which they passed there would be no strain on either the nails or the material through which they passed. I then thought that there was a new and valuable principle of fastening metals which I would not forget. I then commenced to analyze the subject, to see where metals would probably be the most extensively used, and what sort of a device it would require for an adjustable fastener that would be applicable for use in fastening metals in those different places where they would naturally be used, and knowing that the longer or larger the piece of metal the greater would be its contraction and expansion, therefore my attention was soon directed to railroads and roofs, as they seemed to require more than any other place I could think of at that time.
111 I then commenced to analyze the subject of the adjustable fastener, what sort of a device it would require for roofs and railroads, and, after considerable study, I perfected the adjustable fastener, as shown in the model and drawings, for connecting railroad rails.

Then, after considerable more study, I perfected another form of fastener that had all motions, would move in any direction required by the contraction and expansion of the roof and other places where I did not know which way the metal was going to expand, as I saw it would require two kinds of fastening to be used on the roof, one kind to have one motion, the same as those used for connecting railroad rails, those to be placed in four lines from the centre, the centre being fastened permanently, and those adjustable fasteners placed on the lines above mentioned to move in but one direction with the metal that was to be fastened, while the others to be used on the roof had all motion, to move in any direction required by the contraction and expansion of the roof.

(Answer objected to as being almost wholly irresponsive.)

37. Q. In what year did you come of age?

A. In October 17, 1843.

38. Q. What did your father do in regard to the farm when you came of age, or shortly thereafter?

A. He divided it up into three parts, giving a portion to me and one to my brother, and using a portion for himself. I think the whole farm was somewhere in the neighborhood of three hundred acres. I suppose I had somewhere in the neighborhood of one-third, and my brother also about one-third, and my father retained about one-third. It was never measured. Father reserved the buildings, the home, anyway.

39. Q. What did you do after this division in regard to working your portion of the farm?

112 A. My brother and I worked the place two summers together. I then sold out my interest to him.

40. Q. Look at the deed now shown you, which is marked "Complainants' Exhibit Johnson Deed No. 2," and state whether or not that is the deed which you gave to your brother when you sold out to him as you testified.

A. It is.

41. Q. After you sold your portion of the farm to your brother what did you then do?

A. I went to board with Alanson Strong, and in the fall I was married, Sept. 14, 1846.

42. Q. After you had shown the model to Griswold Johnson and Strong, as you have testified, what did you do with it?

A. I put it on the plate under the eaves of the wood-house, under the roof at the eaues.

43. Q. Where did this conversation take place?

A. Under this wood-house where I left the model.

44. Q. After you were married, in September, 1846, where did you and your wife go on a wedding trip?

A. We went to attend the State fair at Auburn that fall.

45. Q. How long did you remain at Auburn?

A. I could not say exactly. It was not many days.

46. Q. While you were away on this wedding trip with your wife, did you have any conversation with her in regard to your invention; if so, what was it?

A. I did. I purchased a washing machine while there, and the right to manufacture and sell them, and on our way home, talking about that washing machine, the subject of my invention came in. I told her I had made an invention of an adjustable fastener for fastening metals in all places where it required fastening, and its contraction and

113 expansion required accommodation, which I thought was a valuable invention, and intended to patent. I told her especially for connecting railroad rails; that was of the subject of the conversation—might not be the exact words, but was the substance of the conversation.

47. Q. When you left Auburn did you return to Franklin?

A. I did.

48. Q. How long after that did you reside at Franklin?

A. I left there the last of March or the first of April; I think the last of March, 1847.

49. Q. Where did you move to?

A. I moved to Acra, Greene Co., N. Y., in the town of Cairo.

50. Q. What place in Acra did you move to; did you own any property there?

A. I moved on to a place I purchased of Frederick Crapser, a farm of sixty acres. I took a deed of the place April 1st, when I went there.

(Counsel for complainants gives notice that he has sent for a copy of such deed from the records, and that as soon as it arrives he will offer the same in evidence.)

51. Q. After you went to Acra did you continue to experiment on your invention?

A. I continued to experiment on the metal house and roof on which this fastener was to be used; also on a cornice machine for making the cornices, gutters, and mouldings of all descriptions to be used on this metal house, in connection with my adjustable fastener.

52. *A.* How long were you engaged on such experiments?

A. I continued studying on the invention until I got a chance to sell an interest in the invention to get money to take out the patent.

114 53. Q. Did you make any efforts to raise money to apply for a patent from the time you moved to Cairo to the time you made your application?

A. I did.

254. Q. What was your principal financial during the time you were at Cairo?

A. It was much better when I went there than when I left. The house that was on the place when I bought it was an old house of little value, which I rebuilt, making it all new, except a very small portion, which cost more money than I had at the time, so that I had to borrow money to carry on the farm and build the house, which I was never able to pay until after I sold my farm, and not then. I got involved in debt there, and was never able to get out.

55. Q. When did you succeed in disposing of an interest in your invention, so as to raise money to make your application for a patent?

A. It was either in 1856 or 1857. I am not positive if it was in the latter part of 1856 or the early part of 1857.

56. Q. To whom was it that you disposed of such interest?

A. To William Higbie and Henry Link, of Little Falls, Herkimer Co.

57. Q. After you made your application for a patent was it returned to you by the Patent Office, on the ground that it contained several distinct inventions, and were you requested to elect which claim you would retain in this particular application?

(Question objected to, as file-wrapper and contents in evidence are the best evidence of what the Patent Office did in the application.)

A. It was.

58. Q. Did you then amend your specification as far as this

115 application was concerned, and afterwards take out other patents for the other inventions?

(Same objection.)

A. I amended my specification by electing the adjustable fastening, and made other applications for patents, and got some of them—other portion of the same invention.

Adjourned to May 22, at 11 a. m.

NEW YORK, *May* 22, 1877—11 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

Examination of Asa Johnson resumed.

59. Q. After you had made your invention of an adjustable fastener and slotted side-plate, as adapted to railroads, what did you then proceed to do?

A. I then proceeded to invent another fastener that had all motions, that was to be used on a roof in such places, as I could not tell in what direction it would be required to move, to accommodate the contraction and expansion of the metal roof; also made the other one—perfected both kinds of fasteners that were to be used on roofs.

60. Q. After you had completed the 1843 model, of which you have testified, did you make any other similar model; if so, when and where?

A. I did make another model, to be used for connecting railroad rails, either before or just after I moved to Acra. I think just after.

61. Q. When you moved to Acra did you go directly to your farm, or how?

116 A. I hired a room or rooms in a neighbor's house, where I stayed until I had repaired my house, for a number of months.

62. Q. Was it during this time that the second model was completed?

A. It was during that time or just previous to it. I think it was during that time.

63. Q. Did you unpack all the things you brought from Franklin while you were in lodgings, or did you wait till you got into your own house?

A. I waited until I got into my own house. We kept house at the neighbor's.

64. Q. Do you know whether that second model is now in existence or not?

A. I think it is not.

65. Q. Did you made any other similar model or models prior to takin gout your patent?

A. I don't recollect of any now. I might have made some and might not. I don't recollect of any.

66. Q. Have you looked among your papers to ascertain if you had any more drawings; and, if so, with what success?

A. I looked, but did not find any.

67. Q. After you left Franklin to go to Acra when did you first return there, if at all?

A. I think it was in 1856; I am not quite positive.

68. Q. Did you go there then on a visit?

A. I did.

69. Q. Where did you stay?

A. I could not say if I stayed at my father's or my brother's; I think I stayed one night at my brother's and then went to Mr. Strong's. I think I went to Mr. Strong's first. I was not there but a short time.

70. Q. Did you at that time see the 1843 model?

A. I did not.

71. Q. When did you next go to Franklin?

A. I think it was a year ago last April. I am not exactly positive as to the exact month; I think it was April, a year ago this last month.

117 72. Q. What did you go there for then?

A. I went there to see if I could find the old model that I made while living home at father's, in 1843.

73. Q. Did you succeed in finding such model, and, if so, where?

A. I did succeed in finding it, and found it on the plate of the wood-house, under the roof, where I laid it in 1843.

74. Q. How many bolts were there in the model when you found it last spring?

A. There were two.

75. Q. What has become of one of them?

A. One of them is with the model, and the other the nut was loose, and it got off, and I have not been able to find it.

76. Q. Was any machine having an adjustable fastener and slotted side-plates in practical operation, with your knowledge or consent, prior to your application for a patent?

A. There was not.

77. Q. You have stated that you made efforts to raise money to enable you to carry out your invention and apply for a patent; please state what such efforts were.

A. I tried to sell an interest in the invention to different men in Cairo; one, I recollect now, was William Chitester, and Henry Bowman, who lived at the Forge, kept a store there.

78. Q. In answer to question 46 you say that you purchased the right to manufacture and sell a patent washing-machine; do you mean the right of the whole United States, or what?

A. I mean simply in the county of Delaware, in the State of New York.

Cross-examined by Mr. LAW:

79. X Q. You were born in Franklin, I suppose?

A. I was.

118 80. X Q. And you lived there with your father till you became of age, did you?

A. I did.

81. X Q. And you were born when?

A. Seventeenth of October, 1822.

82. X Q. And how old were you when you left home?

A. I must have been twenty-four.

83. X Q. Now, how long before that time was it that your attention was directed to this matter of fastening metals so they could expand and contract?

A. Well, I should think it was four or five years.

84. X Q. What enables you to say it was four or five years before that time; any incident or matter which enables you to fix the time; if so, what was it?

A. I know it was some time before I was of age.

85. X Q. Is that the only way you can fix it?

A. That, and from general recollection.

86. X Q. Is there any connection between your having your attention directed to that matter and your coming of age?

A. There is between that matter and the conversations I had with father before I came of age.

(Answer objected to as irresponsive, and question repeated.)

87. X Q. Question 86 repeated.

A. I know I was not of age at that time.

(Same objection to answer.)

88. X Q. How do you know you were not of age at that time?

A. Because I was at work for my father.

89. X Q. Did you work any—to any extent whatever—for your father after the time you became of age?

A. I think I did until sometime the next winter or spring. I think he divided the farm.

90. X Q. What thing or circumstance was it that first directed your attention to such matter; I mean the very first thing that so directed your attention?

119 A. The difficulty there was in keeping roofs tight.

91. X Q. What difficulty do you mean? Specify particularly.

A. Well, flat roofs, that is, all roofs, unless they were pretty steep, were very liable to leak unless they were covered with metal; and hearing father and others talk about the objection there was to that, and by seeing wagon-tires set, wheels spoilt by the expansion and contraction of tires, were probably the first things that led my mind to the subject of the invention.

92. X Q. Now, did all these things—the trouble of the flat roof, the hearing your father and others talk about tin roofs, and seeing wheels spoilt by the contraction and expansion of the tire—occur or happen at one and the same time?

A. It did not.

93. X Q. Which of these did occur first? State, if you can.

A. I presume I had noticed the wheels and roofs first.

94. X Q. Where had you made your observations about wheels; was your father a blacksmith?

A. He was not. I made it at the blacksmith's where he had the tires set, and at home, by seeing the tire get loose in summer and crush the wheels in winter.

95. X Q. How many times did you ever know of wheels being crushed in the winter by the contraction of the tire upon them, and when such tire had got loose on the wheels during the summer?

A. They began to crush the wheels the first winter after they were set always. They would always be tighter in the winter than in summer—usually be tighter in winter than in summer.

96. X Q. You say they began to crush the wheels the first winter after they were set always; would that depend upon the time of the year when they were set; would it occur if they were set in the spring?

120 A. It would depend something on whether it was cold or hot weather when they were set—whether it would occur if they were set in the spring would depend something on the temperature when they were set. They would never be as tight when they were first put over the wheel as they would during the coldest weather next winter, unless the wheels had been wet by rain or some other water, so as to swell the wood.

(All the last sentence objected to as irresponsive.)

97. X Q. If the tire was set in the spring after the season opens, as it is called, would that tire get loose or expand so as to be loose during the summer?

A. Usually, sometimes not very loose. It would be looser during the summer usually than when it was set.

98. X Q. When tire is to be set on a wheel is it not always cut shorter than the length of the periphery of the wheel?

A. It should be a little shorter when it is cold enough to make it fit tight to the wheel.

99. X Q. Last question, 98, repeated, and the witness is requested to answer definitely, so far as his own observation extends, and not as to what should be done.

(Counsel for complainants objects to all this testimony as not open on cross-examination.)

A. It is usually cut enough shorter to have it fit close or tight to the wheel.

100. X Q. And the tire, after having been cut to the proper or required length, and the ends having been heated and welded together, so as to make the tire in a continuous piece, is then again heated
121 in a fire hotter than any temperature of the atmosphere, and thereby expanded before it is put on the wheel; is not that so?

A. It is.

101. X Q. And after the tire so heated is put around the wheel it is held in place, and the wheel and tire put into water so as to cool the tire, is it not?

A. The tire commences to cool gradually as soon as it is taken out of the fire and put over the wheel. It contracts gradually until it comes up nearly or quite to the wheel; then water is turned on it until it is nearly cold; then usually they take it up and turn it round in a trough of water.

182. X Q. And when the tire that has been put on a wheel is entirely cold, the wooden part of the wheel within the tire is tightly clamped by the tire, is it not?

A. It is.

103. X Q. Now, when tire has been so set on a wheel, and the tire has afterwards by the heat of the atmosphere been expanded or loosened, how often have you seen such a tire so set crush the wheel when the tire was subjected to the influence of colder weather?

A. You don't see it all done at one time; but the tire continues to expand in hot weather in the summer and contract in winter, and every time the tire is set and a piece taken out of it, it will crush the wheel in proportion to the amount the tire has been shortened.

(Answer objected to as irresponsive.)

104. X Q. How long was it after your attention was directed to this matter of expansion and contraction of metals that you made up your your first model?

A. It was somewhere from one to two years.

105. X Q. Can't you fix any more definite time than that?

A. It was probably nearer two years than one; probably about two years; it might have been more than that after I noticed the tire and roofs.

122 106. X Q. Did you make drawings or model first?

A. I made rough sketches first, but made this model before I made those drawings.

107. X Q. Where are those rough sketches?

A. They were never preserved.

108. X Q. Have you made any search to see if you could find them?

A. I know they were never preserved; never perfected at all. I simply drew out certain portions of different devices in analyzing it to see what sort of a device it would require for an adjustable fastener.

I have made no search to find any such sketches; they were burned up at the time.

109. X Q. The first model you made was to illustrate your adjustable fastener for use on railroad rails; how happened that when you had been first observing about roofs and tires on wheels?

A. I had been analyzing for both places and both purposes, but it was easier to get one motion than all motions, and therefore I perfected the one for rails first.

110. X Q. What had been your opportunities for learning what troubles, if any, arose on railroad rails from expansion and contraction?

A. It was my observation of metals, the contraction and expansion of tires, and hearing father talk about the objection there was to metals on that account.

(All the answer objected to as irresponsive.)

111. X Q. What had your father told you about objections from expansion or contraction of railroad rails?

A. I don't know as he spoke particularly about railroad rails.

112. X Q. You have had conversations with your brother and Mr. Strong, a year ago this spring, and this spring, about your invention and the old model found in the old wood-house, have you not, and as to when that model was made?

123 A. I had a conversation with my brother when I went out to find it.

113. X Q. That was a year ago this spring, was it not?

A. I think it was.

114. X Q. And did you not have a conversation at that time with Mr. Strong about the same matter?

A. I may have and may not; I think I did.

115. X Q. And in those conversations with your brother and Mr. Strong was not something said by you or by them, or one of them, as to the time when the old model was shown them; in what year it was, and so forth?

A. I don't recollect of time being mentioned at all.

116. X Q. Before you went out to see them did you know for a certainty that you had made a model while with your father?

A. I did.

117. X Q. How did you know that; from what?

A. General recollection.

118. X Q. After you made the model in 1843 you did nothing further while you were at your father's and before you left Franklin, did you?

A. I did.

119. X Q. What?

A. I perfected the adjustable fastener that had all motions, and that was to be used on those portions of the roof where I could not tell in what direction it would be required to move them.

120. X Q. But that did not apply for use on railroad rails, did it?

A. The one that had all motions did not; was not applicable for railroad rails, or not as good as the other.

121. X Q. Could that fastener that had all motions be used on railroad rails?

A. It could.

122. X Q. How?

124 A. It could be used the same as the other, except it would not hold the rails from slipping sidewise as firmly as the other.

123. X Q. Was that device which provided for all motions intended to be used on railroad rails or on roofs?

A. It was intended to be used on roofs, in the places before mentioned.

124. X Q. And after you had made the model of 1843, showing the application of your invention to railroad rails, did you do anything further while you were in Franklin as to your invention as intended to be applied to railroad rails?

A. I made drawings of the same. I don't think of anything else at present.

125. X Q. Why did you put that model away in the wood-house in the place you have mentioned?

A. Because I considered it a safe place; a place where it would not be disturbed or lost.

126. X Q. When you moved away from Franklin to take up your residence in Cairo why did you not take that model with you?

A. I did not think anything about it at the time I moved.

127. X Q. After you put that model away in the wood-house in the place you have mentioned did you see it again while you were in Franklin and before you moved away?

A. I don't know that I did.

128. X Q. The next model you made was it the same in construction as that first one?

A. It was, except being a little more perfect; the holes were all on a line, and the same size. The principle of it was the same.

129. X Q. What did you pay for the washing-machine right you bought?

A. I thing I paid thirty-five dollars for the right and one machine.

130. X Q. What was the machine worth, or called worth, when you bought it, or was it thrown in?

A. It was so much for the right and the machine.

125 131. X Q. Was it a working machine or a model?

A. It was a working machine.

132. X Q. What did such machine cost to make?

A. I don't know as I could say the exact cost. I had some made; I think they sold for ten dollars; that was the price asked for them; I did not get that. I sold the county right I had and the machines I had on hand for one hundred and fifty dollars, except one I reserved for myself.

133. X Q. When you went to Acra and repaired your home before you went into it, were those the repairs you referred to when you said you made the house nearly over anew?

A. They were.

134. X Q. How much did all those repairs cost?

A. I could not say exactly.

135. X Q. State as near as you can how much those repairs cost, how many hundreds of dollars?

A. I think I paid the carpenter about seventy or seventy-five dollars for his work; what the materials cost I couldn't say.

136. X Q. (Last question 135 repeated.)

A. I have no means of telling the exact amount.

137. X Q. You have stated that you rebuilt your house at Acra, making it all new except a small part, and that you got involved in debt by it. Now state whether all your work on that house costs you five hundred dollars or a thousand, or how much more or less. State, as near as possible, the expense of all such repairs.

A. I think it was less than five hundred.

138. X Q. How much did you pay on such farm in Acra when you bought it?

A. Five hundred dollars.

139. X Q. You have said that you made experiments, after you went to Acra, on the machine to make cornices, gutters, &c., which could be used on roofs with your adjustable fastener. That machine
126 had nothing to do with the use of your adjustable fastener on railroad rails, had it?

A. I don't know that the machine had anything to do with railroad rails.

140. X Q. That second model, which you say you made after you went to Acra, where is that?

A. I don't know.

141. X Q. What was done with it after you made it?

A. It was lying about the house while I lived there.

142. X Q. When did you move from there, what year?

A. I think I moved from there in 1857; I am not positive.

143. X Q. When you moved from there did you see or have that model?

A. I don't know that I saw it at that time.

144. X Q. The drawings of 1843, where have they been since you made them?

A. They were in Franklin till I moved from there, and since then they have been in my possession about the houses where we have lived. We have lived in a good many places. They have been whereever we have lived.

145. X Q. You have not kept those drawings in any particular place, or under lock and key, have you, since they were made?

A. No, sir.

146. X Q, Have you made careful search to determine whether you have any other drawings of your adjustable fastener, except those produced?

A. I have made search but did not find any.

147. X Q. Can you positively testify that you made any other? I do not ask for your impression or belief.

A. I have made others since, I think, but I am not positive that I made others before.

148. X Q. (Cross Q. 147 repeated.)

A. I would not want to swear positively that I did before the patent was taken out.

127 149. X Q. You say you made efforts to raise money to apply for a patent, and that you tried to sell an interest to Chitester & Bowman; when did you try to sell to them an interest?

A. After I moved to Acra, while I lived there.

150. X Q. How long after you moved there before you tried to sell to Chitester & Bowman? Give the exact time, as near as possible; whether one year, five years, ten years, or what number of years after you moved there.

A. I spoke to them different times about it.

151. X Q. You did not know them till you moved to Acra, did you?

A. I did not.

152. X Q. During what part of the time that you lived in Acra was it that you first spoke to those men about that matter; during the early or latter part of the time you were there, or when?

A. I think I spoke to Mr. Chitester during the few first years; I know he came there while I was repairing the house.

153. X Q. Did you speak to him about it at that time?

A. No, sir.

154. X Q. What was his business?

A. He used to buy chickens, eggs, and butter to supply the Mountain House.

155. X Q. Had he any connection with or anything to do with railroads?

A. Not that I know of.

156. X Q. Had Bowman anything to do with railroads?

A. Not that I know of.

157. X Q. Did you ever see any railroad company in reference to putting your invention into use, while you were at Acra?

A. I did not. Before 1857, I never did.

158. X Q. Did you ever make, before your patent, a full-size
128 model, large enough, I mean, to be applied to railroad rails, of your fastener as intended to be applied to railroad rails?

A. I don't know that I did.

159. X Q. Did you ever, before your patent, apply your invention of self-adjusting fastener to roofs?

A. I never did.

160. X Q. Did you make any effort to do so?

A. I did not.

161. X Q. You have said that you returned to Franklin in 1856; you think it was that year, but that at that time you did not see the old model; did you look for it?

A. I did not.

162. X Q. Why not?

A. I did not think anything about it at that time.

163. X Q. While you were at Acra, what business did you do?

A. I carried on my farm; also worked perfecting my inventions.

164. X Q. What inventions? Specify particularly.

A. When I got my adjustable fastener perfected, so far as the fastener was concerned, I discovered that it was necessary to have a slide or spring at the edge of the roof, and also at the edges of metals, at all places where it was to be used, to allow for the contraction and expansion of the metal at those edges, in order to have this adjustable fastener practicable for use on metal buildings, roofs and so forth, at the edge of the roof which required a cornice and gutter, and also a spring to accommodate the contraction and expansion of the roof and siding at that point; therefore, I invented a cornice and gutter altogether that would connect the siding and roof and prevent the water from running over the gutter and setting back under the roof and running down to spoil the walls below. It also formed a spring to accommodate the contraction and expansion of the roof and siding, and kept the wind from getting under the roof, attaching the roof
129 and siding together, so that the roof could not get off without drawing the siding up over the frame, or breaking some parts of the cornice. I also invented a segment-formed ridge moulding, to be used at the ridge connecting the two sides of the roof, and also invented segment-formed pilasters to be used at the corners of the building, and also inside cornice to be used inside of the building, connecting the ceiling at the corner to form a spring to accommodate the contraction and expansion of the ceiling at those points. Also all the other mouldings, door and window casings for the same purpose, accommodating

the expansion and contraction of the metal at those points, and also to form a nice finish to the building outside and in, give it an ornamental appearance, as well as to be a house that was adapted to my particular mode of adjustable fasteners. After I had that done I discovered that it would be a very difficult matter to make that cornice and gutter and all the mouldings that would be required to make my adjustable fastener a practicable thing for use on buildings by hand. Therefore, I then went to work and invented a cornice machine for making cornice and gutter all together, while hot, and passing through boiling oil; also for making all other mouldings that would be required for use on metal buildings, so as to perfect a building that would be adapted to my adjustable fastener, so as to make the invention a practical and valuable invention to me and the public.

165 X Q. Have these inventions described by you in your last answer gone into practical use, so as to become valuable to you and the public?

A. Some of them have.

166 X Q. You say, you carried on your farm; did you carry it on and do the other things you have mentioned in your answer to the cross-q. 164, by yourself, or your labor alone, or did you hire persons to help you work the farm?

A. I hired some help to work the farm.

130 Redirect by Mr. CRAMER:

167. Q. What became of the rough sketches that you made, prior to making your model, in 1843?

A. I suppose they were burned up.

168. Q. Do you know whether they were burned up before or after you made that model?

A. I do know. Some of them were burned up before and some after the model was made.

169. Q. Are there any of these rough sketches in existence now?

A. I think not.

170. Q. Is or is not your device for providing for the expansion and contraction of the metal in railroad rails the simplest form in which your adjustable fastener and slotted side-plates can be used?

A. I believe it to be the simplest and best.

171. Q. Does or does not that form provide for the movement of the metal in one direction only, and that longitudinally?

A. It does.

172. Q. After you had discovered that form, did you or did you not then seek to invent another form of such adjustable fastener and side-plate as would permit of movement of metal, whether of roofs or otherwise, in all directions?

A. I did.

173. Q. Have the drawings of which you have testified, and which are in evidence, been in your possession or under your control since they were made by you at their respective dates?

A. They have.

174. Q. Did you ever succeed in sufficiently interesting Chitester & Bowman in your inventions to induce them to invest any money in them?

A. I never did.

175. Q. You have stated in answer to 164 X Q. that you deemed it necessary to make several improvements in your invention as you supposed, and also a machine for the purpose of utilizing such im-

131 provements; did you suppose, at the time, that the Patent

Office would grant you a single patent for all those improvements and for that machine if incorporated in one application?

(Objected to as irrelevant and immaterial.)

A. I did.

ASA JOHNSON.

Subscribed and sworn to before me this 22d day of May, 1877.

WILLIAM H. DE LANCEY,
Special Examiner.

Adjourned to May 23, 1877, at 10.30 a. m.

NEW YORK, *May 23d*, 1877—11 a. m.

Present, Mr. Cramer for complainants; Mr. Law for defendants.

IRA A. STRONG, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, residence, and occupation.

A. My name is Ira A. Strong; my age is thirty-seven; my residence is Franklin, Delaware Co., and I am a farmer.

2. Q. Are you the son of Alanson Strong?

A. Yes, sir.

3. Q. How long have you resided in Franklin?

A. I was born there, and have resided there ever since.

4. Q. Do you know Griswold Johnson, of Franklin?

A. Yes, sir.

132 5. Q. How long have you known him?

A. Ever since I was big enough to know any one.

6. Q. Have you ever worked for him?

A. Yes, sir.

7. Q. Has your work been day-work, or how?

A. I worked some for him occasionally by the day until the summer I was twenty years of age, and the next summer by the month.

8. Q. Do you mean that you worked for him by the month the summer you became twenty years of age and the next summer?

A. Yes, sir.

9. Q. When you worked for him by the month, where did you live?

A. I lived with him—made my home with him.

10. Q. At the time you worked for him by the month do you recollect any circumstance occurring in regard to finding a model; if so, what was it?

(Objected to as irrelevant and immaterial.)

A. Yes, sir; we were in the wood-house chamber looking for some article to repair; I can't tell what it was, and he reached his hand over in back of the plate and took this model out and said that this was something that Asa got up when he was home; the conversation I can't recollect.

(Answer objected to, as to all that Griswold Johnson said about the model and it having been got up by Asa, as hearsay testimony, and therefore inadmissible in this suit.)

11. Q. Did you see the model?

A. Yes, sir.

12. Q. Please describe it as nearly as you can.

A. I think it was a piece of iron, and the edges, I think, were folded together or nearly so, and there were, I think, two bolts in it, and

there were some holes there were not any bolts in; it was a very rusty piece.

133 13. Q. Do you know how many holes there were through the model?

A. Well, I ain't able to say for certain.

14. Q. Look at the models now shown you, marked respectively "Johnson Model" and "Johnson Bolt, 1843," and state whether you recognize them as the models which Griswold Johnson took out from behind the plate in the wood-shed.

(Objected to as improper and inadmissible with reference to the testimony of the witness already given.)

A. I could not say whether it was the same, but it is similar to it.

15. Q. Since that time have you ever seen this model before it was shown to you in the presence of the examiner?

A. No, sir.

16. Q. Have you worked for Griswold Johnson by the month since the time of which you have testified?

A. No, sir.

Cross-examined by Mr. LAW:

17. X Q. What year was it you saw that model in the wood-house?

A. I can't tell that for certain.

18. X Q. How long was that model in your hands, if at all?

A. Not at all.

19. X Q. How long a time did Mr. Johnson have that model in his hands at the time you saw it?

A. It was but a short time; it was not more than two or three minutes; at the outside hardly that.

20. X Q. Were you both up on the floor from where he took the model, or were you down below?

A. We were both up on the floor.

134 21. X Q. You did not examine the model then at that time?

A. Not particularly; no.

22. X Q. Mr. Asa Johnson was not there at that time, was he?

A. No, sir.

IRA A. STRONG.

Subscribed and sworn before me this 23d day of May, 1877.

WILLIAM H. DE LANCEY, *Sp'l Ex'r.*

Adjourned to Friday, 25th, at 1 p. m.

NEW YORK, *May* 25—1 p. m.

Present, counsel for both parties as before.

(Counsel for complainants offers in evidence certified copy of deed, dated April 2d, 1847, from Frederick Crapser and Agnes, his wife, to Asa Johnson, of property situate in the town of Cairo, Greene County, New York, recorded in the office of the clerk of said county, March 13th, 1854, in book No. 48 of deeds, page 423, which is marked "Complainant's Exhibit Crapser Deed to Asa Johnson, W. H. De L., sp'l ex'r.)

Adjourned to Friday, June 1st, 11 a. m.

NEW YORK, *June 1st*—11 a. m.

Present, counsel for both parties.

Adjourned to June 4th 1 p. m.

135 NEW YORK, *June 4th*, 1877—1 p. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

ANDREW H. FOSTER, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, residence, and occupation.

A. My name is Andrew H. Foster; my age, 47. I reside at Syracuse. I am a brickmaker.

2. Q. Did you ever work on the Oswego & Syracuse Railroad; and, if so, when did you first go to work on that road, and in what capacity?

A. I went to work on it as a laborer in the fall of 1848.

3. Q. Did you have anything to do with laying the track on that road?

A. Yes, sir; I worked along with the men laying the track, grading, and helping.

4. Q. Did you assist in preparing the rails for laying on the track, that is, by drilling the holes in them, or anything of that kind?

A. No, sir; that was a separate job.

5. Q. In laying the rails, was any piece or pieces of iron used at the joints to hold the rails together; and, if so, how many at each joint?

A. Two; one on each side.

6. Q. What did you call those pieces of iron?

A. We used to call them straps.

7. Q. Were there any holes through these straps?

A. Yes, sir.

8. Q. How many?

A. Four in each strap.

136 9. Q. What was the shape of those holes?

A. They were round, sir.

10. Q. How were the straps fastened to each other and to the rail?

A. Fastened by bolts and keys.

11. Q. About how long were these straps?

A. I should judge they were between twelve and fifteen inches; I never measured them.

12. Q. Look at the pieces of iron now shown you, marked "Defendant's Exhibit Oswego & Syracuse Rail Joint, 1850," and state whether they are like or unlike the straps of which you have testified; and, if unlike, state how they differ.

A. They resemble them; they are like them as near as I can get at it.

13. Q. Are the holes in these exhibits the same as those in the straps which you assited in laying?

(Objected to, as the witness has already answered the question.)

A. The holes in the straps I assisted in laying were round holes; I don't know whether you call those round holes or not.

14. Q. What part of the track of the Oswego & Syracuse Railroad did you assist in laying?

A. I assisted in the Oswego end of it.

15. Q. Were any of the straps delivered at that end of the road?

A. Yes, sir.

16. Q. How were they delivered?

A. They were drawed there from the canal.

17. Q. Do you know where they came from?

A. The understanding was they came from the iron works, Corning's; I did not see them delivered on the boat, but that was the general talk.

(Objected to as hearsay.)

18. Q. Did the bolts which were used to connect the straps with the rail fit tightly in the straps and in the holes in the rail, or not?

A. I think they did, sir.

137 Cross-examined:

19. X Q. How are you able to fix the date as 1848, when you were employed as a laborer on the railroad you have mentioned?

A. I came there in 1848, the first day of September, landed in Oswego.

20. X Q. Who superintended the work you did?

A. Williams was considered the superintendent; he used to pay. Hamilton was the man who was the working boss.

21. X Q. Do I understand you to say that the piece of iron marked "Defendant's Exhibit Oswego and Syracuse Rail Joint, 1850," does not exactly and in every way represent the pieces of iron or straps used in laying the track you have mentioned?

A. The holes I think in the others were rounder than in these. (Witness, pointing to end hole, says:) I don't think this is round.

22. X Q. Did your work as a laborer call upon you specially to notice the shape of the holes, or was your attention specially called to it by anybody?

A. No, sir; I did general work.

23. X Q. Who handed to you these pieces of iron to put upon the rails?

A. There was nobody handed them to me, probably, as I remember I used to, when I was halloaed to, get a bunch of them and take them where they were wanted.

24. X Q. Did you ever measure the holes in such pieces of iron to see if it was round or not?

A. No, sir.

25. X Q. Will you now swear after the lapse of twenty-nine years that the shape of the holes in the irons used in laying that track were not the shape of those in "Defendant's Exhibit Oswego and Syracuse Rail Joint, 1850?"

A. They were not the shape of those, because they were round.

138 26. X Q. How can you so state, when you have just stated that you never measured one of the holes?

A. I never measured one of the holes, but I know they were, because the bolts were round and they fitted exactly.

27. X Q. How long were you engaged in laying the track on this road, and upon what length of the track on this road?

A. The biggest part of three years, beginning in 1848. I worked on sections on gravel trains and on wood trains.

28. X Q. Did you ever hear that a man named Charles A. Curtis was connected with that road, during 1848, and afterwards?

A. Yes, sir; a section boss on the next section to where I worked.

29. X Q. Did you ever hear of a man by the name of Wheeler Truesdale who was connected with that road, in 1848?

A. Yes, sir, I did; I know him as well as I know my brother.

30. X Q. What was the connection of Mr. Truesdale with the road? (Objected to as immaterial.)

A. I could not say whether it was superintendent or civil engineer.

31. X Q. You saw him, did you not, superintending the laying of the road?

(Objected to as immaterial, and as containing an unwarrantable assumption of fact.)

A. I see him there; yes, sir.

32. X Q. Did you also see Mr. Curtis there, superintending the laying of the track?

(Same objection.)

A. He was boss, sir.

33. X Q. He superintended the furnishing and moving of the
139 rails and the pieces of iron and bolts with which the rails were connected, did he not, and directed the giving of them to the laborer to put in place, did he not?

(Objected to as immaterial.)

A. I couldn't say as to that; he was there part of the time; he worked further up the road towards Syracuse than I did.

24. X Q. Do you know how any part of the track of that road was laid except that which you say you worked on?

A. I worked on four sections on that road, and I considered to the best of my knowledge that it was all laid about alike. I couldn't see any difference.

35. X Q. Name the person who superintended the laying of that portion of the track you worked on.

A. His name was Kinney; he was my boss part of the time, and Hamilton was my general boss. He was head boss.

36. X Q. Who was the engineer, and who was the assistant?

(Objected to as immaterial.)

A. That I couldn't tell you.

37. X Q. Did you know of Mr. Alfred Wilkinson, as an assistant engineer?

(Same objection.)

A. I think I did. To the best of my opinion he was there part of the time. One of the Wilkinson's was, I couldn't say which.

38. X Q. Do you know of a man by the name of Robert Murphy, who worked on that road at that time?

(Same objection.)

A. He didn't work on my gang, he worked on the road. He didn't work where I worked.

39. X Q. Do you know of your own knowledge, and by this I mean without any information derived from others, where these iron straps came from?

140 A. I do not; only the general talk. I didn't see them manufactured.

40. X Q. Do you now swear positively that the holes in these iron straps were perfectly round?

A. I do. The bolts were round; they fitted the holes; I never measured them; they were what I call round holes.

41. X Q. Do you or not think that Mr. Wheeler Truesdale, Charles A. Curtis, Robert Murphy, and Alfred Wilkinson would be apt to know as much or more as to the exact and precise shape of these holes as yourself, stating as you have that you never measured one of them?

(Objected to as improper, as calling for the opinion of the witness as to the impression of other parties, especially as there is no evidence before the court that those parties ever measured the holes in the straps that were laid.)

A. I couldn't say but what they had as good a chance as anybody to notice them.

42. X Q. Had you ever worked at laying the track of a railroad before 1848?

A. No, sir; never.

Redirect:

43. Q. Did Wheeler Truesdale, Charles A. Curtis, Robert Murphy, and Alfred Wilkinson stand over you and watch the operation and laying the track during all the time you worked on that road?

A. No, sir; not all the time; there was a boss besides them; more bosses than one; Curtis was there part of the time.

44. Q. As I understand you, the pieces of iron marked "Defendant's Exhibit Oswego and Syracuse Rail Joint, 1850," are the same in
141 size and shape, and generally as those which you assisted in laying, with the exception of the shape of the holes; am I correct?

A. Yes, sir; I should judge they were, except the holes, and these holes in the exhibit are not as round as in those I assisted in laying.

A. H. FOSTER.

Subscribed and sworn before me this 4th day of June, 1877.

WILLIAM H. DE LANCEY,
Special Examiner.

WILLIAM LILLY, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. State your name, age, residence, and occupation.

A. My name is William Lilly; 48 years of age; I reside at Syracuse; I have no occupation now; I was formerly guard in Auburn prison.

2. Q. What was your occupation in 1848?

A. Building coaches in Syracuse in 1847 and 1848, up to 1853.

3. Q. Do you recollect the building of the Oswego and Syracuse Railroad?

A. Yes, sir.

4. Q. Did you see any of the rails laid on that road?

A. I did, sir.

5. Q. Did you notice how the rails were connected together at the joints; and, if so, how?

A. They were put together with straps like "Defendant's Exhibit Oswego and Syracuse Rail Joint, 1850." They were fastened together with bolts and keys.

142 6. Q. Did you see any of the straps before they were laid on the road?

A. I did, sir.

7. Q. Where?

A. I seen them in the freight-house at Syracuse.

8. Q. Where was that freight-house situated?

A. It was west of West street, between the railroad and canal—between the old road to Auburn and the canal.

9. Q. Was there any mark on the plates when you saw them in the freight-house; and, if so, what was it?

(Objected to as immaterial.)

A. They were marked Syracuse and Oswego Railroad.

10. Q. Did you notice the shape of the holes in those straps; and, if so, what was it?

A. I think they were round. I saw them driving in round bolts. I did not measure the holes. I think I can tell a round hole and one that is not round without measuring.

11. Q. Do you know where the straps which were laid on that road came from?

A. I couldn't tell.

12. Q. Have you worked on any railroad at any time; and, if so, on what?

A. I worked on the Central for sixteen years, in the car-shop.

Cross-examined:

13. X Q. How old were you at the time you saw these straps in the freight-house in Syracuse?

A. I was nineteen years old.

14. X Q. What called you into the freight-house?

A. I was sick for a few weeks at that time, and I was only a short time in the city, and used to go around to see what I could see.

143 15. X Q. What had you done or worked at before that time?

A. I was working in a carriage-shop.

16. X Q. What called your attention to these straps in the freight-house?

A. I thought they were kind of odd, so I took them up in my hand to look at them.

17. X Q. How many of them were there?

A. I can't tell.

18. X Q. How was this direction, "Syracuse and Oswego Railroad," put upon them?

A. I think it was in white paint, or something of that kind.

19. X Q. How were the straps fastened together?

A. I think they were fastened by wire.

20. X Q. Did you ever see those identical straps after you saw them in the freight-house?

A. I see them laying them on the track.

21. X Q. On what part of the track? How far from Syracuse?

A. Right close by.

22. X Q. Who was superintending that work?

A. I don't know.

23. X Q. Who was it you saw carry the straps from the freight-house to the track?

A. I didn't see anybody.

24. X Q. How do you know they were the identical ones you saw in the freight-house?

A. I never see any like them there before, so I thought they must be the same.

25. X Q. Are those the only straps you ever saw laid or used on the track of that road?

A. I don't know what they have used since—anything about it.

26. X Q. And do you swear now absolutely that the holes in those straps you saw in the freight-house were exactly round?

144 A. To the best of my opinion they were.

WILLIAM LILLY.

Subscribed and sworn before me this 4th day of June, 1877.

WILLIAM H. DE LANCEY,
Special Examiner.

NEW YORK, *July* 3, 1877—10.30 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

WHEELER TRUESDELL, a witness produced on the part of the complainants, being duly sworn, deposes and says:

1. Q. Are you the same Wheeler Truesdell who was examined in this case on the part of the defendants in December, 1876?

A. Yes.

2. Q. You then testified as to certain clamps which were used on the

Oswego and Syracuse Railroad in the year 1848. Please state what you know as to where those clamps originally came from.

A. Well, I have good reason to suppose they came from Troy, from the Albany Iron Works.

3. Q. Please give your reasons for your opinion.

(Defendant's counsel requests that the witness, in answering this question, should state only his own knowledge as to the matters enquired of, and nothing communicated to him whatever, or what may be his impression as to the matter enquired of.)

A. According to my impression the company ordered the clamps from Troy, or ordered them, I suppose. The clamps were procured
145 and used by the Oswego Railroad. My reasons for that are only impressions. In the first place, the question whether they should use clamps or chairs was more or less discussed by the officers of the company. I remember hearing some of the officers say that it had been so decided to use clamps instead of chairs. I don't know that I have anything further to say.

4. Q. Did you hear any of the officers of the company say anything as to where the order for the clamps should be sent?

(Objected to as inadmissible—calling only for hearsay testimony.)

A. No; I can't say that I did.

Cross-examined by Mr. LAW:

5. X Q. Can you mention the names of the officers who discussed the question as to whether clamps should be used or chairs?

A. I am confident that it was discussed by the directors and the chief engineer. I will say that the engineer, John Lathrop, was present; but how many of the directors I cannot say, but several of them. My remembrance is not distinct enough to state who was absent—the particular names.

6. X Q. Is your remembrance distinct enough to state who of the directors were present when that discussion took place?

A. My impression as to it was, Mr. Wilkinson, Mr. White, John Granger, Jacob Richardson, and Mr. Pardee, of Oswego. I don't know but there was more there. It is a singular fact all those men are dead now.

7. X Q. You have no personal knowledge, have you, where the clamps that were used on that road came from, have you?

A. No; of course I did not see them come from Troy.
146 (All of answer after the first word objected to as irresponsive, and not called for by the question.)

WHEELER TRUESDELL.

Subscribed and sworn to before me this 3d day of July, 1877.

WILLIAM H. DE LANCEY,
Special Examiner.

J. BOYD ELIOT, a witness produced on the part of the complainants, being duly sworn, doth depose and say:

1. Q. State your name, age, residence, and occupation.

A. My name is J. Boyd Eliot; aged fifty; I reside in New York City; am a mechanical engineer and solicitor of patents; and for the last twenty years have been much occupied in testifying in patent causes.

2. Q. What experience have you had, or what familiarity have you, if any, with the construction of metal structures such as pertain to buildings, engines, and railroads generally?

A. My profession has required me to make myself generally familiar

with the construction of all kinds of machinery. I have worked regularly in the shop, both in wood and metal; have planned a great variety of machinery of various kinds, and have superintended the construction thereof; am generally familiar with the various branches of science as applied in the arts; was for some years editor of the Scientific Artisan, during which time, and since, I have solicited more than two thousand patents; have often been called upon to examine into the state of the art with reference to metal structures of various kinds; have often examined the construction of build-
147 ings of metal, and I have often assisted in the construction of machinery for railways, and have often been examined as an expert in causes pending before the United States courts, in which various kinds of structures pertaining to railways were the subject of controversy.

3. Q. Have you examined the reissued letters patent granted to Asa Johnson and Thomas S. Sandford, dated April 16, 1872, No. 4870, "for improvement in fastening sheet metals to roofs," and do you understand the invention therein described and claimed?

A. I have examined the said patent and believe I understand the invention therein set forth.

4. Q. Have you examined the slotted side-plates and fastener, marked "Complainants' Exhibit No. 2, June 8, 1876," and do you understand their construction and mode of operation?

A. I have examined the said exhibit and I do understand their construction and operation.

5. Q. Have you read the testimony of Thomas S. Sandford in this suit, in which, in answer to direct interrogatory No. 5, he states that he saw on the Flushing and North Side Railroad "a fastening in use for fastening the ends of the rails, and composed of two slotted side-plates of iron and four adjusting iron bolts," and do you understand the same?

A. I have read the testimony referred to in the question, and I understand the construction and mode of operation of the devices described by the said Sandford.

6. Q. Please state whether in your opinion side-plates and fasteners like Complainants' Exhibit No. 2, and as described by Sandford, so applied to railroad rails, would embrace any of the inventions described and claimed in said reissued letters patent, and give your reasons for any opinion you may express.

148 A. I have compared the method of construction of the joint of railroad rails as described by Sandford, and also as shown in Complainants' Exhibit No. 2, with the invention set forth in complainants' reissued patent No. 4870, and as I understand the several devices I find in the construction of a railway joint as described by Sandford, and as represented in the exhibit, what I understand to be such a combination of devices as is specified in the complainants' patent, and referred to in the second claim thereof, and my reasons for such an opinion are as follows:

The said second claim of the reissued patent 4870, as I understand it, is for the combination of two pieces of material forming part of a structure by means of two side-plates, or two plates on opposite sides of the material to be fastened, said plates being held like clamps upon the opposite sides of the parts to be held in position by means of an adjusting bolt, or its equivalent, so arranged that expansion and contraction can take place between the two members of the structure to be held in working position, and the said several parts so arranged as

that their expansion and contraction may be repeated continuously, if necessary, without the rupture or destruction of the parts.

Now, if I am correct in this interpretation of the said second claim, then I find in a railway joint, such as described by Sandford, the combination of two rails to be held in proper working position by means of plates on two opposite sides of the rails, which serve as clamps to keep the ends of the rails in line, and said plates are held in position by means of adjustable screw-bolts passing through holes in the plates and in the rails, and said plates are provided with elongated holes, so as to allow expansion and contraction to take place between the two rails as well as the side-plates, and the several members are so
149 united that this movement may go on continuously without rupturing the several parts, or any of them so united, and therefore I conclude that such a structure is substantially in its combination and arrangement like that described in the complainants' patent, and referred to in the second claim thereof.

7. Q. Have you read the testimony of the defendants' witnesses in regard to the so-called "compound rail," and do you understand the same?

A. I have read the said testimony and believe I understand the same.

8. Q. Please examine the piece of rail marked "Defendants' Exhibit section of one-half of compound rail, K. G. W., Ex. 2," and state whether in your opinion it embraces the invention described and claimed in complainants' reissued letters patent, and give your reasons for any opinion you may express.

A. I have made the examination referred to in the question; and, as I understand the subject, I do not find in the said rail, or in the combination of a rail formed of two pieces such as the said exhibit represents, any of the inventions specified and claimed in said patent, for the reason—

First. I do not find in such a combination, the "adjustable fastener," or any equivalent thereof, as specified in the first claim of the said patent; and

Second. In such a combination of the two halves of a rail I do not find the combination which I understand to be the subject matter of the second claim of said patent; for the reason that in combining the two members or halves of a rail together, by means of screw-bolts passing through them, as was done in forming the said "compound rail," there are no clamping plates, such as is described in complainants' patent, used at all in such a combination; but, on the contrary, the members that form the structure, namely, the two halves of the rail, are
150 fastened together, one upon the other, and in such a manner that whatever expansion and contraction may take place in the rail by heating and cooling must take place between the two members sliding one upon the other, throughout their entire length, and without the element of clamps or "side-plates," between which the two members of the structure may move, and which I regard as very essential, in forming a proper coupling between the joints of railway rails; for the reason that it is essential that the said combination shall be so made as that this expansion and contraction may take place continuously, without the rupture of the parts. Furthermore, I may add, as a matter of fact, that in my experience in the use of the said compound rail, that by means of such a combination, owing to unequal contraction and expansion between the two members themselves, and also from other causes, they begin to destroy their connection with each other, and thereby ultimately become useless and impractical in a short time

after they are laid, and I do not know of any such rails being in use at the present time, although they were quite popular in several places some eighteen or twenty years ago.

(All of the last sentence of answer, beginning with the word "furthermore," objected to by defendants' counsel, as not responsive to and not called for by the question, and as volunteered by witness.)

9. Q. Have you read the testimony of the defendants' witnesses in regard to the so-called "solid rail," and used on the Boston and Lowell Railroad in 1856, and do you understand the same?

A. I have read the said testimony, and believe I understand the statements therein made.

10. Q. Please examine the piece of rail marked "Defendants' Exhibit, Boston & Lowell Railroad, 1856, K. G. W., ex'r," and state
151 whether, in your opinion, taken in connection with the testimony of the defendants' witnesses in regard thereto, it embraces the invention described and claimed in complainants' reissued letters patent, giving your reason for any opinion you may express.

A. As I understand the method of forming a joint between the ends of rails, like that shown in the exhibit, and so far as I can gather any information on the subject from defendants' witnesses, I do not find any of the inventions in such a structure, as specified and claimed in complainants' patent, for the reasons already given in my previous answer concerning my understanding of the patent, and especially in reference to what I understand to be the combination in the second claim of said patent, which requires, as already stated by me, a combination with the two members of the rail of side-plates and adjusting bolts, or their equivalent, so that expansion and contraction may take place between the two members, to be thus held in line.

Now, in the joints made like that described by the witnesses referred to, and of rails as shown in the exhibit, there was merely a wooden bar, some four or five feet in length, or of sufficient length to reach across three or four ties of the track, placed and fastened on the outside of the rail, said bar being spiked down to the ties, and its inner face fitting into the concave of the rail on the outside, and then the rail was bolted by one or more screw-bolts to the inner face of said wooden bar; consequently there is in such a structure the entire absence of one of the members or elements necessary to form the combination which I understand to be the subject matter of the second claim of complainants' patent, and therefore I do not find in such a device, or the combination of devices, as referred to by the witnesses on the subject, the invention specified and claimed in complainants' patent.

152 11. Q. Have you read the testimony of the defendants' witnesses in regard to the Oswego & Syracuse rail joint, and do you understand the same?

A. I have read said testimony, and believe I understand the same.

12. Q. Please examine the various exhibits relating to said Oswego & Syracuse rail joint, and state whether or not, in your opinion as a mechanic, the holes in said exhibits were originally formed with an oval or a round punch, and give your reasons for your opinion.

A. I have made careful examination of the several exhibits, namely, the two side-plates, and also the two pieces of rail, and in comparing them together, one with another, and also in examining the form of the holes in the several exhibits, I am well satisfied they were originally formed with a round tool, either a punch or a drill; and my reason for such an opinion is that in one of the side-plates one of the holes is so nearly round at the present time as that it could not, in my opinion, be

the intention of any mechanic to have endeavored to make it oval. Now, in comparing this hole with several of the others that are at present of a somewhat oval form. I find that its curve corresponds very nearly to the ends of the said oval holes, next to where the splice would be made in the rails, or to the centres of the said side-plates, and these ends of the several holes still remain in substantially the same form, or corresponding to the same arc of a circle; but the opposite ends of said oval holes are those ends which extend out from the said centres of the said side-plates; are in some instances smaller than the other end, or they are of irregular shape, and of that kind of shape as would indicate that they had been subjected to more or less wear, and this wearing action is greater on the outside of the plates
153 than the sides next to the rail, and it is also greater at the ends of the holes opposite to the centres of the plates, and it is also plainly indicated in two of the holes near to the centres of the plates, where the plates themselves are worn on the inner sides by the chafing of the rail thereon. Now, from these several appearances of irregularity of shape, and where some of the holes have an oval form, and yet where one hole is very little out of a true circle, it is plainly evident to my mind that said holes were originally formed as nearly round as may be, and whatever there is of an oval character is due to the wearing action of the bolts in the several holes. And I may add still further that this elongation of the holes, if produced by the wearing of the bolts in the holes, would have the tendency to elongate the holes from the centre of the plates out towards their end, and this I find to be, as I believe, plainly indicated in the shape of the holes in the side-plates before me, in which, for example, in one of the plates the two extreme holes are both smaller at their outer ends than the ends next to the centre, which would be just the effect produced by the rails being pulled apart from the joints, and thereby drawing the bolts tightly against the outer ends of the holes, and as the bolts of necessity would be a little smaller than the holes they would wear the end of the hole into a little smaller circle than the opposite end, and the reverse would take place in the holes in the rail, and this is indicated in the shape of the holes in the piece of the rail marked on the top "O. & S. Div., 1848," in which the small ends of the holes are toward the end of the rail where the joint was made. Again, in the piece of rail marked on the top "D., L. & W. R. R." the holes are round, or, in other words, are left in the form they were originally made, which would be the result were said rail not per-
154 mitted to move endwise relatively to the other rail with which it was connected. Such a result would arise where the clamping plates were fastened on at one end more firmly than at the other, and where the parts would maintain their original position.

Again, I notice in the two side-plates that a hole in each, near their centres, is worn more to one edge and a little towards the end of the plate than to the other, and that each of said plates are bent in the opposite direction from which said holes are worn to just about the amount the holes are worn out of line towards the edge of the plate; and this would be just exactly what ought to take place were said plates bent downward, as are indicated, thereby causing the holes to be worn in an upward direction, by the rail forcing the bolt upwards against the edge of the hole. Now, from the fact that the holes in one of the pieces of rail are round at the present time, and are of about the same diameter as the holes in the other piece of rail, at their larger end, I conclude that they were both formed originally round; and whatever there is of irregular shape in the one has been caused by the wearing action of

the bolt therein, and said wearing action is exhibited in the end of the holes in just the place it would naturally be, namely, towards the end of the rail. So also in reference to the plates, from the fact that one of the holes is at the present time nearly round, and it is reasonable to suppose that all the rest of them were made with the same kind of implement that it was made with, it is manifestly evident that all the holes in said side-plates were originally formed as nearly round as it is, and therefore whatever there is of elongation in said holes must be due to the wearing action of the bolts therein; and it would be absurd to suppose that the hole which is so nearly round on one side in such a
155 position had changed from an oval to a round hole of the same diameter as the shortest axis of the other; therefore, I conclude that in the original formation of all the holes in the several exhibits they were as nearly round as they could conveniently be made.

13. Q. Assuming, then, that the holes in said side-plates and rails were originally formed round, would such a combination, in your opinion, embody the inventions, or any of them, described and claimed in complainants' reissued letters patent, and what, in your opinion, would be the practical effect of such a combination?

A. Under the assumptions in the question, and also that said holes were substantially filled by the bolts for fastening the parts together, then such a combination would not, in my opinion, embody the inventions, or either of them, described and claimed in the said patent, for the reason that there would be no adjustable fastening in such a combination, and, as to its practical character, the parts would soon become so ruptured and distorted or worn that it would soon become useless, and, in fact, what one of the defendants' witnesses has testified, a "rattle-trap."

J. BOYD ELIOT.

Adjourned to Friday, July 6th, 1877, at 11 a. m.

NEW YORK, *July* 6, 1877—11 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

Direct examination of J. BOYD ELIOT resumed:

14. Q. Have you read the testimony of the defendant's wit-
156 nesses in regard to the "Newcastle & Frenchtown rail," and do you understand the same?

A. I have read the testimony, and I believe that I understand it.

15. Q. Please examine Defendants' Exhibit "Newcastle and Frenchtown Rail, S. Bell, ex'r," and state whether, in your opinion, it embraces the inventions, or any of them, described and claimed in the complainants' reissued letters patent, and give your reasons for any opinion you may express.

A. As I understand the construction of the railway joint as represented in the said exhibit, and also from the information which I gather from the defendants' witnesses on the subject, I do not find in the said joint, either as it is represented as now before me or as it would be were the parts united together by a rivet passing through the holes which are now open in this exhibit, any of the inventions described and claimed in the complainants' patent. In other words, I do not find in the said exhibit the self-adjusting fastener as specified in the first claim of the said patent; and I do not find in the said exhibit the combination of "slotted side plates" with the two pieces of material to be united by said plates, or to be held in position by them, and therefore do not find in said exhibit "Newcastle & Frenchtown rail" what I understand to

be the combination specified in said patent and referred to in the second claim thereof. In coming to this conclusion, I have taken into consideration the fact that the connection between the two pieces of rail, as represented in the said exhibit, show an attempt to unite the two together by rivetting a plate on the outside of the rail, and there is also an elongated hole shown near one end of one of the rails for one of the rivet' to pass through in uniting the said plate across the joint between the rails, and, therefore, there would seem to be in such a construction an attempt made to allow for the expansion and
157 contraction at the joint between the rails. But the testimony of the defendants' witnesses shows that the rivet for fastening the plate across the joint was introduced into the hole while hot, as a portable forge was taken along the track, while the rails were being laid, for the purpose of heating the rivets; and the testimony also shows that a clamping device was also used for the purpose of holding the parts in a firm position together while the operation of rivetting was being performed. Now, it is well known to any one at all familiar with the process of rivetting with hot rivets that the shanks of the rivets, by the repeated blows of the hammer upon one end thereof, are caused thereby to swell so as to fill up the holes through which the rivets are introduced, and, therefore, whatever apparent intention may have been exhibited in making the holes in the rails elongated, to allow for expansion and contraction, would, in my opinion, be fully counteracted by the use of hot rivets in uniting those parts together; and I have no doubt that if the rivets that were used in the said elongated holes were put in evidence, as the holes and the rails have been, we should find that their shanks, where they fitted into said elongated holes, would be of an oval shape corresponding substantially to the holes. In fact, it is a very difficult matter to prevent a rivet from swelling in the hole it which it is being rivetted during the process of upsetting the end of the rivet. It requires great care on the part of the workman in the use of his rivetting hammer, and also the selection of a hammer properly adapted, to prevent such a result. Furthermore, there being but one plate on the side of the rail, and it fastened thereon by being held tightly thereto by a clamp, as already mentioned by me, and then rivetted fast by a hot rivet, it is manifestly evident that the parts would be so united as to make it practically impossible for
158 the rails to slide to and fro endwise without rupturing the rivets or abrading the metal in the hole. It is well known that the rivet is longer when it is hot than when it is cold; and, therefore, the parts having been held firmly together or in close contact to each other during the operation of rivetting, would be still further compressed together, if possible, by the contraction of the rivet as it became cool, or was reduced to the same temperature of the rail and plate. If I am correct in these views, and I feel very confident from my experience in such matters that I am not mistaken, then there was not in the construction of the joints of the "Newcastle & Frenchtown rails" any arrangement by which the parts could expand and contract without first producing a rupture to a greater or less extent between the parts, and to that extent destroying the original connection by which said parts were to be held in proper working position; and this rupture I have no doubt would take place or be caused in the rivet, as it is the weakest member of the three parts in combination. Furthermore, I may also add that in thus stretching the rivets a certain degree of looseness would be caused between the rail and the plate which would facilitate the wearing of the rivet in the holes, and the plate in a short

time would cease to hold the rail in line with the other one to which the plate was fastened, and the whole arrangement would therefore soon become practically worthless. I may also mention another reason why such an arrangement would be of no practical advantage, and it is this: There being no counter-plate on the opposite side of the rail to support the opposite end of the rivets, they would be caused to move back and forth with the rail, as it moved to and fro in its expansion and contraction, and in this way the shanks of the rivets and the
159 holes around them would soon become worn so that the plate would have no capacity for keeping the rails in line; whereas were a corresponding plate, fastened on the inside for the purpose of sustaining the opposite ends of the bolts, and said plates were provided with elongated holes to allow for the expansion and contraction endwise, then the rails would have a firm support on each side, and could move continuously to and fro endwise without straining the bolts and without rupturing any of the parts, and without any tendency to throw the rails out of line by a greater resistance on one side than on the other. For these reasons, as well as the entire absence of one element of the combination in the formation and the joint, I do not find in said exhibit "Newcastle & Frenchtown rail" the invention specified and claimed in the said second claim of claimants' patent.

16. Q. Have you read the testimony of defendants' witnesses, and examined the drawings shown in connection therewith, in regard to a device used on locomotives to provide for the expansion of the boiler on the frame of the locomotive, and do you understand the same?

A. I have read the said testimony, and examined the drawings shown in connection therewith, and believe that I understand the same.

17. Q. Please state whether in your opinion such a device or devices as described by said witnesses, and shown in said drawings, embodies the inventions, or any of them, described and claimed in complainants' reissued letters patent, giving your reasons for any opinion you may express.

A. As I understand the devices referred to in the question, I do not find in any of them what I understand to be the invention set forth in complainants' patent, or specified in either of the claims thereof, for the reason that there is not in either of said devices the kind of "ad-
160 justable fastener" referred to in the first claim of said patent, and there is not in either of said exhibits the combination specified in the second claim of complainants' patent, namely, the combination of "two slotted side plates" with two pieces of "material to be fastened together" and held in relative position to each other by means of an "adjusting bolt," or any equivalent therefor. In the said exhibits, for allowing for the expansion and contraction of the boiler on the frames of locomotives, there is merely two pieces of metal placed one upon the other, on each side of the engine, one of said pieces being provided with an elongated hole in which the screw-bolt that passes through the other piece may be permitted to move, and these two pieces are thereby permitted to slide or move endwise relatively to each other, to compensate for the expansion and contraction of the boiler; and, therefore, there is not in such an arrangement the combination of any "slotted side-plates" whatever, nor is there any necessity for any such element in such a combination; and, therefore, the combination specified in the second claim of complainants' patent is not shown or described in the several exhibits referred to in the question.

18. Q. Have you examined the testimony of defendant's witnesses,

and the drawings therein shown, in regard to the so-called "strap rail," and do you understand the same?

A. I have examined the testimony, and also the drawings connected therewith, and believe that I understand the same.

19. Q. State whether, in your opinion, said "strap rail," exhibit marked "Utica & Schenectady flat rail, 1836," embodies any of the inventions described and claimed in complainants' reissued letters patent, and give your reasons for any opinions you may express.

161 A. It does not, as I understand the subject, for the very manifest reason that said exhibit merely represents two straps of metal fastened on to the stringers of the track by means of spikes driven down through elongated holes in the rail, and thereby fastens the rail upon said stringers, and having a short plate of metal underneath the joint between the two ends of the rail, which construction would require a corresponding piece of metal or plate to be fastened on top of the rails, and that the two be united by means of an adjusting bolt or bolts, to form the combination specified in the second claim of complainant's patent; and, therefore, do not find in said exhibit the combination set forth in said patent and specified, and in the second claim thereof. And I may further add that if an additional plate were fastened on the top of the rails, it would make an impractical and entirely worthless construction of the joint between the rails.

20. Q. Have you examined the models marked respectively Complainants' Exhibits "Johnson Model, 1843," and "Johnson Bolt, 1843," representing the side-plates, bottom plate, and bolt made by Asa Johnson in 1843, and the testimony of said Johnson in relation thereto, and do you understand the same?

A. I have examined the said models, and read the testimony in connection therewith, and believe that I understand the same.

21. Q. State whether, in your opinion, a working machine constructed like said models, and applied to railroads at the joint or ends of the rails, would embody the inventions, or any of them, described and claimed in complainants' reissued letters patent, and give your reasons for any opinions you may express.

A. In my opinion such a combination would embody the invention specified and claimed in the second claim of said patent, for the
162 reason that in such a combination there would be represented two slotted side-plates with the two rails to be fastened together and held in working position by an adjusting bolt, substantially as described in said claim. And I may further add that were the side-plates combined with the bottom plate as represented in the said Johnson Exhibit of 1843, it would form a better joint or means of connecting the ends of railroad rails than is at present used where only the two plates are attached to opposite sides of the rails, and, as a matter of fact, I know that some roads are now using side-plates with flanges projecting down over the edges of the base of the rail, to serve as sustaining ribs underneath the rails.

22. Q. In your answer to the sixth direct interrogatory you have given evidence as to what you understand to be the true interpretation of complainants' reissued patent. Please look at the model now shown you, and state whether or not it correctly represents such a combination as you have represented in your answer to the said question.

A. I have examined the devices referred to in the question, and I regard it as a correct representation of the invention referred to by me in my answer to said question.

(Complainants' counsel offers the model referred to in evidence, and

it is marked "Complainants' Exhibit Wooden Splice, W. H. De L., sp'l ex'r.")

23. Q. Have you read the letters patent granted to Moncure Robinson, dated March 16, 1839, No. 1105, for "improvement in the mode of constructing the chairs of railroads and attaching the rails thereto," and do you understand the same?

A. I have read the said patent, and believe that I understand the same.

163 24. Q. Please state whether, in your opinion, such letters patent embrace any of the inventions described and claimed in complainants' reissued letters patent, and give your reasons for any opinion you may express.

A. As I understand the subject, I do not find in the said Robinson patent any of the inventions described and claimed in the complainants' reissued letters patent, for the reason that in the said Robinson patent there is not such an adjustable fastener as that specified and claimed in the first claim of complainants' patent; and second, there is not the combination of slotted side-plates with the material or the rails to be so united and held in position by an adjusting bolt, or the equivalent thereof, as specified in the second claim of complainants' reissued letters patent. There is only shown and described in the said Robinson patent a railroad chair, formed of a bottom plate and a bracket or vertical rib cast on one side thereof, and of such a shape as to fit the outside of the rail, and said rib or bracket is provided with square holes for the purpose of receiving a screw-bolt with a square shank, and the rail is provided with a rectangular hole, somewhat longer than it is wide, for the purpose of allowing it to move endwise over the square shank of the screw-bolt, and said bolt is provided with a nut for the purpose of fastening the rail firmly to the side of the chair. Now, in such a construction of railway joints it is manifestly evident that the only surface which holds the rail up to the side of the chair is the inner face of the nut on the end of the screw-bolt, and as said nut is fastened on the end of the bolt which is projected from a square hole in the chair, and is therefore held at right angles to the line of the rail, it is manifestly evident that the inner face of the rail must slide back and forth to whatever extent it expands and contracts along
164 the inner face or in contact with the inner face of the nut, and one of two results will thereby surely follow, namely, that such movement of the rail will soon turn the nut on the shank of the bolt until it is out of contact with the rail or else it will break off the bolt where the screw-thread terminates with the square position of the shank of the bolt, and thus, in either case, the rail will soon become loosened from contact with the side of the chair, and the whole structure will thereby become useless. But were said chairs provided with a plate on the inner side, so as to sustain the inner end of the bolts and so that the rails could slide to and fro between the plate and the side of the chair, then there would be in such a combination of the parts substantially such a combination as is specified in the second claim of complainants' patent, as I understand the invention therein set forth.

(Complainants' counsel offers in evidence a certified copy of the patent granted to Moncure Robinson, No. 1105, which is marked: "Complainants' Exhibit Robinson Patent, W. H. De L., sp'l ex'r.")

JOHN BOYD ELIOT.

Adjourned to 13 July, at 11 a. m.

NEW YORK, *July* 13, 1877—11 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

Adjourned to July 24th, 1 p. m., at request of defendants' counsel.

165 NEW YORK, *July* 24, 1877—1 p. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

Cross-examination of J. Boyd Eliot by Mr. LAW:

25. X Q. That part of the second claim of the patent reissue No. 4870, Complainants' Exhibit 1, after the word "plates," is descriptive as to the connection and combination of the adjusting bolt and slotted side-plates with the materials to be fastened together, such materials having expansion and contraction with reference to each other, is it not?

A. I believe it is.

26. X Q. What, in such claim, is claimed in combination with the adjusting bolt and slotted side pieces?

A. The materials to be fastened together by the use of the side pieces and the bolt, or at least this is the view I have of the claim as I would construe it.

27. X Q. From what, in such second claim, do you draw the conclusion mentioned in your last answer, that the materials to be fastened together by the use of the side pieces and bolt are claimed in combination with the adjusting bolt and slotted side pieces, and especially with reference to your answer to the cross-question 25?

A. The claim, as I understand it, is evidently for a combination of something, and the two elements, namely, the adjusting bolt and slotted side-plates, are coupled together by the conjunction "and" as forming one member of the combination, and this member of the combination is to be suitably connected to and combined with the materials to be fastened together, as expressly stated in the claim, and the words to

166 which reference was made in answer to my first cross-question, I understood, did not exclude the materials as not belonging to the combination, but that the question had reference to the means of connection of said materials, and said means would be any suitable method of connecting them, and I therefore answered the first cross-question that the words following the word "plates" had reference to the method of attaching the materials, but I did not mean to exclude the materials as elements of the combination. I may also remark here the first word "with" in the said claim, I think, is evidently a mistake in its use in the place in which it is of no consequence.

28. X Q. You mean by the last clause of your last answer that the word "with" in the second claim is evidently a mistake, according to your construction of the claim, do you not?

A. I do.

29. X Q. The second claim, then, as it stands in the patent giving the ordinary meaning to the several words contained therein, is not fully clear and intelligible and free from all question as to its proper meaning, is it?

A. I think it is perfectly clear to any one familiar with such documents, as it is very evident that the use of the word "with" in the first line of the claim is wholly unnecessary, as it does not couple anything in the place in which it is located, and is, in my opinion, just as evident a mistake as it would be to repeat the word immediately after it had been properly used, and if said word be left out of the claim then the rest of the claim is very intelligible.

30. X Q. In construing the claims of a patent, when you are examined as an expert to such patent, do you consider that you have the right to take from such claims such word or words as you may consider to be a mistake or to be unnecessary?

167 A. Yes, if it is evidently a misprint or a clerical error, which any intelligent reader can readily see is the case; and I may here remark that in this case, the first time I read the claim over in the presence of the counsel for complainants, I called attention to the use of the word "with," in the first line of the claim, and remarked that it was evidently a mistake, and on reading the entire claim found that the word was evidently repeated in connection with the materials to be united, and that one or the other of them should be erased, and in the copy of the patent which I have been using I made the erasure of the word "with" in the first line at that time. I do not, however, regard it as material to the proper understanding of that claim that the first word "with" be erased, or the second one where it occurs in the third line, as the reading in either case would be substantially the same, and the language would be grammatically correct.

(All of the answer after the words "readily see is the case" objected to by defendants' counsel, as irresponsive to, and not called for by, the question, and the witness is requested to confine his answer to the questions put and not state other matters in connection therewith.)

31. X Q. And do you consider that in construing a claim you have a right, as an expert, to disregard any words you may consider to be misprints or clerical errors, without the fact having been shown or proved that such words are misprints or clerical errors?

A. I do, if it is manifestly evident from my knowledge of the language that such is the case.

32. X Q. You have stated, in your answer to the 27th cross-interrogatory, that in the second claim the member of the combination, consisting of the adjustable bolt and slotted side-plates, is to be suit-

168 ably connected to, and combined with, the materials to be fastened together, "as expressly stated in the claim." Quote from such claim the language which expressly states that.

A. In making that answer I did quote almost entirely from the claim, but I will leave out the word "with" in the first line of the claim, and then read from the claim as follows: "I claim, in combination, the adjusting bolt and slotted side-plates, suitably connected to, and combined with, the materials to be fastened together."

33. X Q. What, in your opinion, is covered by and embraced within the first claim of the patent, Exhibit 1? And, if a combination, specify the particular elements or parts which go to make up such combination.

A. The first claim is for a self-adjusting fastener as described, and if I follow the description and the drawings of the patent, I should regard said fastener to consist of five elements, namely, the slotted side-plates as two of the elements, the adjusting bolt that passes through them as another, the connecting piece which is attached at one end to the bolt, and which is marked in the patent by the figure 2, as another, and a screw or fastening of some kind, which is in the other end of said piece from the bolt and which is marked by the numeral 1, as the fifth; or, in other words, I regard these five things as "the self-adjusting fastener" as described in said patent for the purpose of attaching metallic coverings to buildings, &c.

34. X Q. Does not the first claim embrace a self-adjusting fastener for use in other places than on metallic coverings to buildings, and the

use of such a fastener in any and all other places where expansion and contraction are to be accommodated?

A. It does when it is such a self-adjusting fastener as described.

169 35. X Q. Then, in your opinion, the first claim embraced only such a self-adjusting fastener as has two slotted side-plates, an adjusting bolt passing through such plates, a stud, 2, connecting with such adjusting bolt, and the screw, 1, for attaching the upper end of such stud to some material, which may have motion by means of expansion and contraction; am I correct?

A. That is substantially my opinion of such claim. Of course I do not understand that it is to be limited to precisely those devices in the form there shown, but I mean the mor their equivalents, as, for example, a rivet may be used in place of a screw, or a different shaped piece may be used in place of a stud, but I regard said claim limited to the elements substantially as in the question.

JOHN BOYD ELIOT.

Adj'd to Thursday, July 26, 1877, at 11 a. m.

NEW YORK, *July* 26, 1877—11 a. m.

Adjourned at request of defendants' counsel to July 30th, 11 a. m.

JULY 30TH, 1877—11 a. m.

Adjourned at request of defendants' counsel to Aug. 3, 1877, 11 a. m.

NEW YORK, *August* 3, 1877—11 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

36. X Q. What do you consider is covered by and embraced
170 within the second claim of the patent, Exhibit 1? And, if a combination, specify particularly the specific and several elements or features of such combination.

A. I consider that it includes at least five elements, namely, two pieces of material to be fastened together, two slotted side-plates to serve as clamps on opposite sides of the materials to be fastened together, and an adjusting bolt or its equivalent to hold said clamping plates in position thereon.

37. X Q. Previous to your examination in this case you had examined the several exhibits of the defendants in this case, viz. the "compound rail," the Exhibit "Boston and Lowell Rail," the Exhibit "Oswego & Syracuse Rail Joint," and the Exhibit "Newcastle Frenchtown Rail," had you not?

A. I had.

38. X Q. And in your testimony as to what is in your opinion the invention described and claimed in the Complainants' Patent Exhibit 1, have you given such testimony from an examination and consideration of that patent, Exhibit 1, alone, or did you, in giving such testimony, take into consideration in connection with such patent the said exhibits referred to in the last question?

A. In giving my testimony concerning the interpretation of the patent I have kept in view the state of the art, as I understand it, not only from these exhibits, but others of which I have knowledge.

39. X Q. Mention the other things beside the exhibits mentioned in the last question but one, which you have reference to in your last answer, as exhibiting the state of the art, and which you had in view in giving your testimony, as you state.

A. I do not remember the names of the inventors of the various de-

vices which I have had in my mind, but I think there were two or three English patents for the construction of railway frogs, in which
171 there were elements introduced to compensate for expansion and contraction, and I think there was a party in the vicinity of Cincinnati, Ohio, who had a system of clamping devices in which there was an adjusting key arranged so as to compensate for expansion and contraction of the materials to be fastened together. I do not remember, however, the names of the parties nor the date of their inventions.

40. X Q. Please describe the elements introduced in the English patents, relating to railway frogs which you refer to, to compensate for expansion and contraction, and how they acted.

A. In one of the cases I refer to, the part of the frog known as the tongue had an elongated hole in it through which the bolt passed that held the wing-rails in position, relatively to the tongue; and in another one there were flanges projecting out from the tongue, which were slotted to receive the bolts that fastened it upon its bed-plate. I do not remember now about the other one.

41. X Q. And in the two cases you described in your last answer that part of the frog which had the elongated hole or holes in it would move by expansion and contraction upon the bolt or bolts which passed through such elongated hole or holes, is that so?

A. It would.

42. X Q. In the device which the party in the vicinity of Cincinnati had, and in which there was an adjusting key, was there any elongated hole in such device which allowed the movement of the part having such hole upon any other part?

(Objected to as not cross-examination. Complainants' counsel gives notice that in all testimony of this nature defendants are making this witness their own witness, and will be bound by his statements.
172 Defendants' counsel states that it appearing from the witness's own testimony that he has formed his conclusions as to what is and what is not covered by the patent, upon which this suit is brought, from other sources than the patent itself; that the defendants are entitled to know what those things are from, and upon which, in connection with the patent, the witness has formed his opinion as to what the patent covers, and defendants' counsel therefore not only insists that the enquiries put by him are legitimate as cross-examination, but he also requires the production of the said patents and devices referred to by the witness to be made a part of his testimony in this case.

Complainants' counsel admits the right of the defendants to cross-examine the witness as to his general capabilites as an expert, but denies that they have any right to go on a fishing expedition to discover any new matters which have not been referred to in the direct examination, and to which no reference has been made in the answer of the defendant, and therefore insists upon his objection.)

A. There was.

43. X Q. You speak of the second claim including five elements, among which are "two slotted side-plates to serve as clamps on opposite sides of the material to be fastened together;" according as you understand such claim, will such two slotted side-plates be separate and distinct pieces in all cases?

A. No. As I have already testified, or in words to that effect, they may be united at one edge with a bottom plate which will serve to hold them together in addition to the adjusting bolt, and in the case
173 of splicing railway rails or rafters in a building would make a better fastening than when made in separate pieces.

44. X Q. Then, as I understand you, in a case of rafters in buildings there would be no necessity of a separate side-plate, and the rafters might be used in the place of such side-plates; am I correct?

A. I cannot comprehend how any such inference could be drawn from any answer I have given.

45. X Q. Explain, then, more fully, what you meant by the latter part of your last answer but one, which is as follows: "And in case of rafters in a building would make a better fastening than when made in separate pieces?"

A. I meant simply that where rafters are spliced together, and upon which there is vertical pressure, the same as in railway rails, that is, that the bottom plate in such cases would serve as an additional element to hold the side-plates at their splice or joint.

46. X Q. In cases in which there was not and could not be used a bottom plate, such as you refer to, would these two side-plates in such cases have to be separate and distinct parts or pieces within the second claim, as you understand it?

A. They would.

47. X Q. The invention described in the Complainants' Patent Exhibit 1 is for a self-adjusting fastening for use in any and all places where metals require fastening and are liable to contract and expand, and their contraction and expansion has to be accommodated or provided for, is it not? And in answering this, and all questions relating to such patent, Exhibit 1, please answer the same from such patent only, and without permitting your answer to be influenced or affected by anything outside of the patent itself.

(Complainants' counsel objects to defendants' counsel imputing
174 to the witness any intention of allowing his testimony to be affected or influenced in any way.)

Defendants' counsel disclaims any such imputation, and has annexed the last clause of the last question because it appeared from the witness' own explanation that in construing the patent he had gone outside of it and had kept in view in his answers relating thereto other matters than those set forth in the patent itself, and defendants' counsel simply requested the witness in the answers he should hereafter give in reference to that patent that he would confine himself to the consideration of the patent itself, and to that alone.

Complainants' counsel insists that the imputation referred to in his objection is plain from the language of the latter part of the question, and is made plainer by the explanation of defendants' counsel, that the witness had gone outside of the patent in his answer, whereas it is evident that the witness has used his general knowledge of railroads, &c., to make manifest to the court his construction of the language of the patent itself, which complainants' counsel humbly conceives to be the duty of an expert in cases of this kind.)

A. Yes; "substantially as set forth" in said patent for "substantially as specified" in the claims thereof.

48. X Q. The phrases in your answer, "substantially as set forth" and "substantially as specified," are quoted from the claims of the patent, are they?

A. They are.

175 49. X Q. My question had reference to the declaration or general recital of invention found in the first clause of the patent, Exhibit 1. Is the enquiry made by me in such interrogatory in accordance with such declaration or recital of invention as set forth in the first clause of said patent?

A. It is.

50. X Q. And the invention described in such patent, Exhibit 1, consists in the combination in the materials or parts to be fastened together, and which are liable to expand and contract, of a bolt or pin and slotted holes or bearings in the direction of expansion and contraction, and such pin or bolt and slotted holes or bearings being so arranged in respect to each other that the parts having such slotted holes and carrying such pin or bolt can move upon each other as they contract and expand, does it not?

A. Yes; and in addition thereto having the "bearings combined with the materials to be fastened," as stated in the patent.

51. X Q. As the self-adjusting fastening described in the patent Exhibit 1 is for use in any and all places where metals require fastening and their expansion and contraction require accommodation, such self-adjusting fastening must necessarily be changed, modified in shape and arrangement of parts, in order to render it applicable to all places where metals are to be fastened and their contraction and expansion provided for, must it not?

A. Yes; at least in all places comprehended in the patent.

52. X Q. Does not the language of the patent comprehend as the places in which the self-adjusting fastening referred to therein is to be used all places where metals require fastening and their expansion and contraction require accommodation?

A. Yes; so far as pertains to the "new and useful mode" of such fastenings.

176 53. X Q. What do you mean to be understood by your last answer, after the first word thereof?

A. I mean to limit the patent thereby to whatever there is "new and useful" in the combination recited in the patent.

54. X Q. The patent expressly states, does it not, that the invention is a new and useful mode of self-adjusting fastenings for fastening metallic coverings to buildings, and for use in any and all other places where metals require fastening and their expansion and contraction require ac'ommodation?

A. It does.

55. X Q. And the contraction and expansion of the metals referred to in the patent are permitted or provided for by means of slotted holes or bearings in the direction of expansion and contraction, and a bolt or pin arranged to slide in such holes or bearings, is it not?

A. Yes; the expansion and contraction are provided for by the slotted holes, either with or without the pin.

56. X Q. Explain more fully what you mean by your last answer.

A. I mean that so far as the movement of the parts is concerned the elongated hole provides for expansion or contraction, and that such provision is made whether a bolt is put through it or not. Of course, in order to fasten the pieces together, or when they are fastened together, the use of the bolt is necessary.

57. X Q. Then, the self-adjusting fastening, which is the subject of the patent Exhibit 1, is not complete except it has the slotted bearings and also the bolt or pin sliding therein; am I correct?

A. That is my understanding of it.

177 58. X Q. And such self-adjusting fastening is described as for use in all places where metals require fastening and their contraction and expansion require accommodation; am I correct in that?

A. Yes; as under this patent.

59. X Q. What do you mean by the words in your last answer "as under this patent"? Explain fully and particularly.

A. I mean that the bearings shall be combined with the materials to be fastened, in connection with the elongated holes, and the bolt or pin to hold the parts together.

60. X Q. The patent describes a particular construction of self-adjusting fastening for fastening metallic roofs to buildings, and describes no other particular construction of self-adjusting fastening for use in other places; is not that so?

A. It describes a self-adjusting fastening for "use in any and all other places" where metals require fastening, in addition to "self-adjusting fastening for fastening metallic coverings to buildings," and the patent claims "the self-adjusting fastener as described for the purpose of attaching metallic coverings to buildings and accommodating itself to the contraction and expansion of the metal, and for fastening metals in any and all other places where the contraction and expansion demand an accommodation."

(All of that part of the answer which refers to what the patent claims objected to as not called for by the question, and is, therefore, irresponsive and volunteered by the witness.)

61. X Q. For what particular use, except for fastening metallic coverings to buildings, does the patent describe any particular construction of any self-adjusting fastening such as is the subject of the patent? I of course do not refer to the general declaration of the patent that the self-adjusting fastening is to be used in all places where metals require fastening and their contraction and expansion require ac-
178 commodation, but the inquiry is whether the patent describes in detail and illustrates the self-adjusting fastening for any specific use, or for use in any specific place, except for fastening metallic coverings to buildings.

A. Under the limitations of the question, I can answer that there is no specific description of any application of said self-adjusting fastening other than as applied to buildings.

62. X Q. In the self-adjusting fastener as described in said patent, and specified for use for fastening metallic roofs to buildings, there is a stud attached at one end to the roof and arranged to move with the roof as it may expand or contract, the lower part of such stud carrying a bolt or pin which passes through two plates fixed to the under side of the wooden sheathing of the roof, which sheathing is supposed not to move with the roof as that may expand or contract, such plates attached to the wooden sheathing having elongated or slotted holes in them, so that the bolt on the stud can move in such slotted holes as the roof expands and contracts, and carries the stud with it; is not this statement or description in accordance with the patent?

A. I believe it is.

63. X Q. And what, if anything, is there in the description in the patent which defines or regulates the length of the slotted holes in which the bolt or pin of the stud moves?

A. Nothing in the descriptive portion of the patent, apart from the drawing.

64. X Q. Would the invention or the self-adjusting fastener described be changed in principle if the bottom of the stud, instead of having a pin or bolt fixed to it, was so made as to have a slotted hole in the bottom, and the pin or bolt was fixed in and to the two plates which are fastened to the wooden sheathing on the under side of the roof?

A. I think it would not.

179 65. X Q. Such stud as described in the patent is so constructed and arranged in fact, with reference to the bolt or pin which passes through its lower end, that it, the stud, can have motion on the pin in its lower end; is not that so?

A. Yes.

JOHN BOYD ELIOT.

Adjourned to Tuesday, 7th August, at 11 a. m.

NEW YORK, *August 7th*, 1877—11 a. m.

Present Mr. Cramer, for complainants; Mr. Law, for defendants.

Cross-examination of J. Boyd Eliot resumed.

66. X Q. Under the view of the invention, as expressed by you in your answer to the 64th cross-interrogatory, it will not make any difference then whether the part which moves by expansion or contraction carries the bolt or pin which slides in the slotted plates as a fixed part, or whether the part which moves has the slot in it and moves upon a bolt or pin as a fixed part?

A. It will not, as I understand the same, as in either case the expansion and contraction is accommodated or compensated for.

67. X Q. In the invention described in the Complainants' Patent Exhibit 1 the self-adjusting part or mechanism of that invention consists of the slotted plates and the bolt sliding in them, does it not?

A. It does.

180 68. X Q. In the model marked "Defendant's Exhibit Section of One-half of Compound Rail" the holes through such rail are elongated or oblong, are they not?

A. They are.

69. X Q. And through such elongated holes pass the bolts that fasten the two sections or halves of the rail together, do they not?

A. They do.

70. X Q. And will not such elongated holes permit the two sections of the rail to move upon each other, and upon the bolts passing through such holes, as the sections of the rail expand or contract?

A. I suppose they would, if it were possible to have one part of said rail expand or contract without the other, as they lie against each other, or side by side, in contact with each other.

71. X Q. And the sections of such rail would also so move upon each other, and upon the bolts fastening them together, would they not, if the expansion of the two sections was for any cause unequal, or one section should in any way become fixed, so that it would move less freely than the other?

A. I suppose they would.

72. X Q. And would not the head of the bolts used to fasten such sections together, and the nuts on the other end of such bolts, act to some degree more or less like clamps or clamp-pieces?

A. They would.

73. X Q. In your answer to question 10, relating to the rail marked "Defendant's Exhibit Boston and Lowell Railroad," you say that "in the joints made like that described by the witnesses referred to (in said question 10), and of the rails as shown in said exhibit, there was merely a wooden bar some four or five feet in length, or of sufficient length to reach across three or four ties of the track, placed and fastened on the outside of the rail, said bar being spiked down to the ties, and its inner face fitting into the concave of the rail on the

181 outside, and then the rail was bolted by one or more screw-bolts to the inner face of said wooden bar;" please point out the portion of the testimony justifying the construction of the said joint as given by you at folios 416 to 417?

A. In the testimony of Mr. John B. Winslow, who says he was superintendent of the Boston and Lowell Railroad, he says in his answer to question 3, page 36, defendant's record, in which he is asked, "What kind of joints for holding the ends of the rails together was used on that road when you went there as superintendent?" replies, "What is called the Trimble splicer-joint," and then describes the construction of it; and then in answer to question 5, on same page, he says, "It struck me very favorably, indeed, as preventing the rails from 'smudging' at the ends; also in keeping the tracks in line in case of an accident;" and his testimony is corroborated by Franklin Henderson, on pages 40 and 41 of defendant's record. And these are the parts of the testimony, in connection with some portions of their cross-examination, as, for example, questions 23, 24, and 25, on page 39, defendant's record, and cross-question 18, page 42, and the answers to said questions, from which, taken in connection with my knowledge of the Trimble invention as described in his patent, and as I have frequently seen it laid on the road, gave me the information to make the answer which I did to the question No. 10 in my direct testimony.

74. X Q. Then, as I now understand you, your answer to the 10th direct interrogatory put to you was not based wholly upon the "Exhibit Boston and Lowell Railroad," and the testimony of the defendant's witnesses in this case in regard to such exhibit, but was also based in part upon your own knowledge in respect to the Trimble joint and as you have seen it laid; am I correct?

182 A. I think my answer is fairly drawn from the exhibit and the testimony of the defendant's witnesses in connection therewith, as said testimony clearly describes the construction of said joint and its mode of attachment, with the single exception whether the bar was fastened to the cross-ties or not; but I think the plain inference from the last clause of Mr. Winlow's answer in his fifth direct question, where he says, "Also in keeping the tracks in line in case of an accident," is that said bar was fastened to the cross-ties to assist in keeping the rails in line, as he says; and then having stated that Mr. Trimble was the inventor of said joint, and that they had a license to use it, I was further enabled to clearly understand exactly how said joint was made by examining the patent therein referred to, and also my own knowledge, which I had gathered from parties who had laid what was called the Trimble joint.

75. X Q. You never laid the Trimble joint yourself, did you?

A. No; I have frequently stood by and saw track-layers doing it.

76. X Q. Do you find anything in the testimony of defendant's witnesses in this case, in connection with the rail marked "Defendant's Exhibit Boston and Lowell Railroad, 1856," except the quotation made in your last answer from the answer of John B. Winslow to the 5th interrogatory put him, which sustains your position or assertion that the wooden bar that was placed on one side of the rails at their joints was spiked down to the ties?

A. I don't remember of any other.

77. X Q. The holes in the rail "Defendant's Exhibit Boston and Lowell Railroad," and through which the bolts pass that hold the wooden bar against the rail, are elongated holes, are they not?

A. They are.

183 78. X Q. And such holes would permit the rail to expand and contract upon the bolt which fastened the bar to the rails if such bar was not otherwise fixed to the rails, would they not?

A. They would.

79. X Q. The fish plates or bars that were used upon the Oswego and Syracuse Railroad were made, as the witnesses testify, with elongated holes, longer in the direction of the rails than the diameter of the bolt which passed through them. If fish plates or bars with such holes made in them were placed each side of the rails at their joints, and bolts were passed through such elongated holes and through holes in the ends of the rails, would not such fish plates or bars so constructed allow the rails to move upon the bolts as the rails should expand and contract?

(Objected to as containing an unwarrantable assumption of fact, none of defendant's witnesses having testified as to the making of the clamps referred to in the question.)

A. Under the assumptions of the question they would allow for such expansion or contraction.

80. X Q. What has been your personal experience in the use of the compound rail?

A. I have seen it in use in several places when it first came out. I think I was residing in Cincinnati, Ohio, where it was laid on the Little Miami Road, leading eastward from Cincinnati. I watched its operation from time to time with considerable interest, and when it was first laid it attracted my attention on account of its evenness of track or smoothness of the road, like that often seen where the track is laid through bridges, but it was soon found not to be of a very durable character, as it threaded down between the heads of the rails, wedged them apart, and soon formed uneven places in the road. I have seen it in
184 several other places since that time and have observed the same difficulty, and I have not known of its being used anywhere, and do not know of its being in use on any road during the last 12 or 15 years.

81. X Q. This threading down between the heads of the rails, and which wedged the rails apart, as you state, was due to the fact that the rails were made in two parts, cut vertically, thus giving comparatively a narrow tread on each part or half of the rail, was it not?

A. It was.

82. X Q. You have been asked in reference to the rail illustrated by the "Defendant's Exhibit Newcastle and Frenchtown Rail," and have spoken of certain difficulties that might be found in fastening the two ends of the rails together by riveting one end of the bolt which passes through the end of the connecting splice-piece and through the oval hole in the end of the rail; with proper care on the part of the workmen performing such riveting process, such workmen being properly skilled in that kind of work, and such workmen having suitable tools for performing that kind of work, would there practically be any difficulty in riveting such bolts so that the rail could have motion upon it as the rail would expand or contract?

A. Under all the assumptions in the question I think they would if the parts were so riveted as to be held relatively to each other to produce any practical effect in binding the parts together, for this reason: that the thickness of the rail is about the same as the thickness of the splice-piece, and in drawing the head of the rivet against the side of the rail in order to fasten the two together a frictional contact thus formed between the under side of the head of the rivet and

the side of the rail, in order that the one may be held in line with the other, to such an extent as that as soon as a rail expands or
185 contracts, to move it endwise, it would either carry the rivet along with it or strain the head or shank of the rivet to such an extent as that when the rail returned to its first position it would not be as tightly held as when the rivet was first formed. This action would vary according to the filling up of the hole in the splice-piece by the rivet, so that the rivet might be held firmly by the splice-piece at right-angles to the line of the rail, or be so loose as to travel with the rail, and in this latter case the shank of the rivet would either be stretched in traveling with the rail, or the shoulder on the under side of the head of the rivet would be upset so as not to press tightly on the rail in its second movement or operation of expanding or contracting; in other words, such a construction begins to separate or rupture the parts to a certain degree as soon as they begin to move from the position in which they are first formed.

83. X Q. In your last answer you have assumed that the end of the bolt that passes through the splice-piece and the oblong hole in the end of the rail would be riveted down against the side of the rail, have you not?

A. I think not, but that the head of the rivet would be drawn so tightly against the side of the rail as to move with it. I do not, however, regard it as very material which position may be taken, whether the head or the riveted end is placed against the rail.

84. X Q. The specification accompanying the order for the rails for the Newcastle and Frenchtown Railroad Company, and in accordance with which such rails and connecting-plates and bolts, &c., were required to be made, speaks of a washer to each rail, and a bolt with a square head to pass through the oblong hole in the end of the rail and through the washer, and such bolt to be of sufficient length to
186 allow of being riveted; what was the use of such washer and where was it to be placed, in your opinion?

(Objected to as incompetent and immaterial, the opinion of the witness as to what ought to have been done, in the light of modern research, having no connection with what was actually done.)

A. I do not know where it was to be placed. I should place it on the side of the rail and rivet the bolt against the washer, if I were to put the parts together with my present knowledge of how such things ought to be done.

85. X Q. And if the parts were so connected together and the connection was made in a proper way and by competent workmen, could not the rail have motion on the bolt by reason of the oblong hole in the end of the rail, as such rail would expand or contract?

(Objection repeated.)

A. I have no doubt the rail would have motion endwise under its expansion and contraction, but whether on the bolt or not would depend upon the firmness of the bolt in the splice-piece, as if it were not firmly held at right-angles to the face of the splice-piece it would be carried to and fro as the rail moved.

JOHN BOYD ELIOT.

Adjourned to Friday, August 10th, 1877, at 11 a. m.

187 NEW YORK, *August* 10, 1877—11 a. m.

Present, Mr. Cramer, for complainants; Mr. Law, for defendants.

Cross-examination of J. Boyd Eliot resumed.

86. X Q. The evidence put in by defendants showing devices used

on locomotives to provide for the expansion of the boiler on the frame of the locomotives show slotted plates, or parts having bolts passing through such slotted plates, and such slotted plates are capable of motion on such bolts as the boiler expands or contracts, are they not?

A. They are.

87. X Q. The strap-rail illustrated by "Exhibit Utica and Schenectady Flat Rail, 1836," when laid in the manner proved by the defendant's testimony, could have motion on the spike passing through the elongated holes in such strap-rail and entering the sleeper, as the rail expanded and contracted, could it not?

A. It could.

88. X Q. Is the model "Complainants' Exhibit Wooden Splice" intended or designed to illustrate the "Complainants' Exhibits Johnson Model, 1843," and "Johnson Bolt, 1843"?

A. It is, or a modification of the same.

89. X Q. Such model "Complainants' Exhibit Wooden Splice" is not in form and construction the same as the "Complainants' Exhibits Johnson Model, 1843," and "Johnson Bolt, 1843," is it; and state fully wherein the first-mentioned model differs from those last mentioned?

A. The are not identically the same. The Johnson model of
188 1843 had the side-plates connected or combined with a bottom-plate, or, in other words, the two side-plates with a bottom-plate formed a kind of trough in which the lower part of the rails are inserted at their splice or joint, whereas in the "Complainants' Exhibit Wooden Splice" the bottom-plate is left off, and only the side-plates are shown as forming clamps on opposite sides of the rails.

JOHN BOYD ELIOT.

Subscribed and sworn to before me, this 10th day of August, 1877.

WILLIAM H. DELANCEY,
Special Examiner.

189 United States circuit court.

ASA JOHNSON AND THOMAS S. SANDFORD
v.
THE FLUSHING AND NORTH SIDE RAILROAD CO.

Testimony taken on the part of the defendants in the above-entitled cause, under the 67th rule in equity of the Supreme Court of the United States, and the amendments thereto, before Kenneth G. White, esq., examiner.

NEW YORK, *October* 10, 1876.

Present, S. D. Law, counsel for defendants; E. J. Cramer, counsel for complainants.

JOHN H. REED, a witness produced and sworn on the part of the defendants, being duly sworn, in answer to interrogatories propounded to him by S. D. LAW deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. John H. Reed; I am forty-nine years old; I reside in Boston, Massachusetts, and I am ironmaster and treasurer of the Bay State Iron Company.

2. Q. How long have you been connected with or familiar with the business of said company?

A. With the predecessors of the Massachusetts Iron Company and the present company since 1847.

3. Q. Has the Bay State Iron Company, and its predecessors, the Massachusetts Iron Company, as a part of their business, rolled rails for different railroad companies?

A. Yes, sir.

190 4. Q. Have you any knowledge of rails having been rolled by those companies having punched in them holes—elongated holes, or holes larger than the bolts to pass through such holes—at or near the ends of the rails, so as to allow of contraction and expansion?

(The complainants' counsel here objects to any evidence by this witness tending to prove any alleged prior knowledge or use of the thing patented, on the ground that the name and residence of this witness or place of alleged prior knowledge or use are not stated in the answer.

This objection is continued, without further note, to each and every interrogatory and answer relating to said subject. The fourth question is also objected to as leading.

Defendant's counsel states that the name of this witness, and of one other witness—Franklin Henderson—whom it is proposed to examine in this case, were not known to him at the time the answer and its amendments were filed in this case, and that if complainants' counsel does not consent to the insertion of such names in the answer application will be made to amend the answer by inserting such names.

And also further says that the evidence of the present witness is rather to show the state of the art than otherwise.)

A. I have knowledge of such rails being made and so punched by the Bay State Iron Company.

5. Q. State when, to your knowledge, such company first made rails so punched, and describe the kind of rail so first made and punched.

A. In June, 1853, we made a rail called "compound rail," one
191 half or side of which was punched with an elongated hole, the other half or side with a round hole.

6. Q. Please describe more fully how that compound rail was made; or what is, as you term it, a compound rail?

A. It was a rail made in two parts, longitudinally, put together with rivets so as to make a continuous rail.

7. Q. And these holes you refer to, for what purpose were they made?

A. To unite the two parts together.

8. Q. You have given the date 1853 when such rails were made; from how do you fix that date?

A. From books kept at the office of the works.

9. Q. Are you able to state to what extent or for what road such rails were made?

A. I can show you memorandums from the books between June and November, 1853, of 9,970 bars made; the deliveries are of the dates from August, 1853, to December, 1854, to the Southbridge and Blackstone Railroad, Paine & Aldrich, and N. H. Slater, for the New York Central Railroad, as called on our books; all of which are part of the present New York and New England Railroad.

10. Q. When next, and for what road next, did that company make any rails having any such holes as have been referred to?

A. The next rails that I remember punched with oval holes, made in July, 1855, were sixty-eight-pound T-rails for the Mobile and Ohio Railroad.

11. Q. State the form of such rails, and whether such rails had any side-plates at their joints, and of what material such side-plates, if any were used, were made.

A. It was a solid rail four and a half inches high, sixty-eight pounds to the yard, made for iron fish-plates.

12. Q. State when the oval holes referred to were punched—whether in the fish-plates or in the rail.

A. In the rail.

192 13. Q. State how many of such rails, as appears from the books of the company, were made by your company in 1855, and when they were, any of them, delivered.

A. I have memorandums with me showing the making and delivery of 15,421 bars; the memorandums I have show a delivery of these, or a portion of them, during that year.

14. Q. Was that rail made for the Mobile and Ohio Railroad a particular size and pattern, or such as you were generally rolling?

A. It was made specially for the road; I am not aware of making that pattern for any other railroad.

15. Q. Were those rails made for that road under a contract, or how?

A. Yes, sir.

16. Q. If you have the contract referred to for such rails please produce it, and state the date of it.

A. I have, sir; the date is May 30, 1855.

(Contract produced by the witness is put in evidence by the defendant, and is marked Defendant's Exhibit Mobile & Ohio Railroad Contract, May 30th, 1855, K. G. W., examiner.)

17. Q. You have spoken of those rails being made for iron fish-plates; have you any contract relating to the making of the fish-plates for such rails? If so, produce it and give the date when made, and with whom.

A. I have a copy of a letter or contract signed by B. S. Reed, on behalf of John Childs, chief engineer and agent of the Mobile & Ohio Railroad Company, accepted by William E. Coffin, treasurer of the Pembroke Iron Company of Maine, office in Boston, dated June 6, 1855.

(Letter produced by the witness is put in evidence by the defendants, and is marked Defendant's Exhibit Fish Joint Contract, June 6, 1855, K. G. W., examiner.)

193 18. Q. Have you any specimen of those rails made by your company in 1855 for the Mobile & Ohio Railroad?

A. No, sir; not to my knowledge.

19. Q. When next, after 1855, and for what railroad company, did your company make any rails which had oval or elongated holes punched in them?

A. Next I recall positively rails made for the Boston & Lowell Railroad Co., May, 1856.

20. Q. State what kind of rail that was, whether solid or compound rail, and whether plates of any kind were to be used upon it at the joints.

A. Solid rail, of the pattern known on our books, Parker & Holmes pattern; from the way in which the rail was punched I infer it was to have a wooden splice-bar.

21. Q. How many rails of that pattern were made for that road in 1856, and were such rails delivered during that year, or when, to said company?

A. The books show 1,440 rails made in May, 1856, and delivered the same month 1,437 rails to that company.

22. Q. Were the rails so made for that company of a specific pattern, and were other rails of the same pattern made by your company at any time for that or any other road?

A. These rails were made at the special order of William Parker, at that time superintendent of the Wooster & Lowell Railroad; I do not remember making them for any other railroad company, or any other than the lot referred to.

23. Q. If you have a part of one of those rails rolled for that company in 1856 produce it.

A. The rail laying on the table, to the best of my knowledge and belief, is a piece of one of those rails.

24. Q. State how you identify that piece of rail referred to in your last answer as being a piece of one of those rails.

A. By its conforming to the tem-plate in the possession of the
195 company known as the Parker & Holmes pattern, and by the brand or mark or brand upon the rail, pressed upon it, as follows: "B. S. I. Co., Boston."

25. Q. State where you obtained this piece of rail now produced, to which you have referred.

A. I understand it has been brought here by Mr. Winslow, the present agent of the Boston & Lowell Railroad.

(The piece of rail referred to is put in evidence by defendant's counsel, and is marked Defendant's Exhibit Boston & Lowell Railroad, 1856, K. G. W., examiner.)

(Here follows diagram marked page 194.)

26. Q. Would you know, from looking at that piece of rail produced, that it was made at your works?

A. The evidence is that it has the brand on it, made by going through the rolls.

27. Q. You have spoken of these several kinds of rails made by your company having oval or elongated holes; state what was the shape and size of the bolts passing through such holes as compared with the holes themselves.

A. It is usual to punch the holes $\frac{1}{16}$ larger than the bolt, and allowing longitudinally an eighth on each side, or a quarter inch in all, for expansion or contraction; they may vary in size on different roads.

28. Q. In your previous answers you have specified particular roads for which your company made railroad rails having elongated holes in them, and you have mentioned dates when rails for such companies were made and delivered, and also the number of rails made and delivered. State from what source you have obtained such dates and numbers of rails made for such roads.

A. From books kept at the office at the works.

29. Q. In connection with the rails made by your company for the Mobile & Ohio Railroad, have you any contract or paper relating thereto for the manufacture of the iron bolts to be used for con-
196 necting such rails and the fish-plates you refer to? If so, produce it.

A. I have a copy of a letter in my father's handwriting, and signed by him, to Lyman Kingsley, agent of the Kingsley Iron and Machine Company, and accepted by Mr. Kingsley, for 60,000 bolts, dated July 7, 1855.

(Letter produced by witness, put in evidence by defendant's counsel, and marked Def't's Exhibit Mobile and Ohio Rail-bolts, K. G. W., examiner.)

30. Q. Who was the B. T. Reed whose name appears to the paper you have produced in connection with the Mobile & Ohio Railroad Company, and what position did he hold with your company, and is he living or not?

A. Said B. T. Reed was my father; at that time he was treasurer of the Bay State Iron Co. He is now dead.

31. Q. Were these three papers you produce in connection with the making by your company of such rails for the Mobile & Ohio Railroad Company obtained by you from the records or papers kept by your company?

A. Yes.

Cross-examined by Mr. BETTS (it being agreed that the asking of the interrogatories and the answers thereto shall not be deemed any waiver of the right of complainants to insist on the objection already noted. Copies of papers produced by the witness may be substituted for the originals, subject to the same objection):

32. X Q. Please describe where the holes—elongated holes—you have spoken of were punched in the compound rail mentioned by you.

A. On one-half of the rail, all along its length, corresponding with the round holes on the other half.

197 33. X Q. These holes were punched in the two halves of the rail for the purpose of riveting them together side by side, were they not?

A. Yes.

34. X Q. There were no splicing-bars or fish-joints used with those rails, were there?

A. No.

35. X Q. In any of your books or contracts is there any mention of the use of elongated holes either for the Mobile & Ohio or Boston & Lowell Roads, or the New York & New England Road?

A. Not to my knowledge.

36. X Q. I find in the contract of your company that it is stated "the B. S. Iron Co. are to cut off and punch splicing-bars at fifty cents per gross ton." Did your company make the splicing-bars under that contract?

A. No, sir.

37. X Q. Why not?

A. We didn't roll that sort of iron.

38. X Q. Did you cut them off and punch them?

A. No, sir.

39. X Q. Why not?

A. Our tools were not adapted to doing it; it would be done better by the maker of the splice-bar.

40. X Q. Did you give up that part of the contract?

A. I presume so. My impression is that at the time Mr. Childs made the contract he expected to purchase the splice-bars in England, but afterwards it was found more advantageous to buy them and have them made in this country.

41. X Q. Do you know whether the Mobile & Ohio Railroad used one or two splice-bars at each joint?

A. The contract called for two, one on each side.

42. X Q. Do you know anything about the actual use of these rails or splice-bars?

A. I never saw them actually in use.

198 43. X Q. Was the contract with the Pembroke Iron Company

for the splice-bars made after giving up that portion of your contrac

A. I presume so.

44. X Q. Does your company now manufacture fish-joints for ra roads with elongated holes punched in the splicing-bars?

A. They have never made a splice-bar.

45. X Q. Does the rail that you have produced and which you unde stand to be one of the Boston & Lowell rails correspond in cross-se tion at either end with the tem-plate of the Parker & Holmes pattern

A. The tem-plate shown is the form of the finishing-groove in th rolls through which the iron passes hot, and the rail corresponds a nearly as it would when cold, and after the wear and tear of twent years. The flanges very seldom fill out in full when rolling, and th whole rail contracts when cooling.

46. X Q. During the period within which you have mentioned havin supplied rails to the various companies mentioned by you did you sup ply other companies with rails provided with round punched holes?

A. I don't remember ever to have punched a rail with round holes except the one-half of the compound rail mentioned and rails for stree railroads.

47. X Q. Then you have given, in your direct examination, all of th deliveries of railroad rails which your company made for other tha street railroads during the period covered by these deliveries?

A. I cannot say that I have. I have given those that were impresse upon me by the peculiarity of their patterns.

48. X Q. Can you say that you did make any other rails during tha period for any one else; if so, for whom?

A. I made rails for various railroads during the period named, fo the Western (now Boston & Albany) Railroad, Boston & Providence Boston and Worcester, and others.

Redirect by Mr. LAW:

199 49. Q. You say the holes in the halves of the compound rai were punched for the purpose of riviting the two halves together; for what purpose were the holes in one side made elongated?

A. For the purpose of allowing for contraction and expansion of the two sides on each other. Rails are always giving and coming.

50. Q. You say that there is no mention in the contract respecting the rails for the Mobile & Ohio Railroad that the holes should be elon gated; state whether, to your own knowledge, the holes punched in such rails were made elongated or not.

A. I state from memory that they were elongated, it being impressed upon my memory as they were the first of heavy rails we punched for iron splice-bars; a new tool was bought to punch them and I watched many of them being punched.

51. Q. You are confident then, are you not, that the holes punched in such rails were elongated?

(Objected to as leading.)

A. I saw many of them punched and handled the punches I am confident the holes were elongated.

52. Q. Since 1856 has your company made rail-bars, from time to time, with elongated holes?

A. Yes.

Recross by Mr. BETTS:

53. X Q. What was this new tool that was bought to punch the rails, and who was it bought of?

A. It was bought of the Hadley Falls Company, located at Holyoke, Massachusetts.

54. X Q. Did you buy any other punches of them?

A. No, sir.

55. X Q. Never?

A. No, sir.

JOHN H. REED.

Sworn to before me, this 10th day of October, 1876.

KENNETH G. WHITE,
Examiner, &c.

200 *Defendant's Exhibit Mobile & Ohio Railroad Contract, May 30th, 1855.—K. G. W., examiner.*

This agreement of two parts, made at Boston, this thirtieth day of May, 1855, between the Bay State iron Company, a corporation duly established by the laws of the State of Massachusetts, of the first part, and the Mobile & Ohio Railroad Company, a corporation duly established by the laws of the States of Alabama, Mississippi, Tennessee, and Kentucky, of the second part, witnesseth:

That said Bay State Iron Company agree to manufacture, at their mills at South Boston, for said party of the second part, three thousand tons of railroad iron, of the pattern known as Mobile & Ohio R. R. pattern, with the right to take 2,000 tons to be delivered in two months after the delivery of 3,000 tons, provi given to Bay State Iron Co. before August 1st, 1855, said rails to weigh about seventy pounds per lineal yard, and to be quality, sawed off square at both ends, and nine-tenths of the rails to be each twenty feet in length, and not over one-twentieth of them in shorter lengths; in making the piles for rails of seven thickness, three-seventh to the pile, to be of twice rolled iron or from old rails, and four-seventh of first quality puddle-bars; all the rails to be straight, free from twist, and without patching. The B. S. Iron Co. are to cut off and punch the splicing-bars @ 50c. per gross ton, all of said rails to be thoroughly welded, and to have the same ready for delivery at their mills, accidents to the mill only excepted, in parcels of 100 or more tons each, the first delivery to be in about one month, if the punches can be obtained in season, and 1,000 tons per month afterwards, to be paid for in cash, as each parcel of 100 tons or more is ready for delivery, at and after the rate of fifty-five and $\frac{50}{100}$ dollars for each and every ton of (2,240 lbs.) twenty-two hundred and forty pounds of rails punched,
201 no payment to be made before July 15th, but interest allowed from date of bill lading to payment.

And said party of the second part agrees to receive said rails in parcels of one hundred tons or more, as they are ready for delivery, and to pay for them in cash, at and after the rate of fifty-five and $\frac{50}{100}$ dollars for every ton of (2,240 lbs.) twenty-two hundred and forty pounds, and to satisfy itself of the character and quality of said rails before they are removed from the mill at South Boston.

Witness the hands and seals of the respective parties, the date first-above written.

THE MOBILE & OHIO R. R'D CO.,
By JOHN CHILDE, [SEAL.]
Ch'f Eng'r and Gen'l Agent.
BAY STATE IRON CO.,
By B. T. REED, *Treas.* [SEAL.]

BOSTON, *Aug.* 31, 1855.

It is agreed that 350 @ 400 tons of rails shall be made next week, and shipped as early as practicable, & that the manufacture after that is to be suspended until October, & that the balance to make 3,000 tons shall be delivered in October & November, and that the time for the delivery of the additional 2,000 tons is to be arranged hereafter, as may be mutually agreed on.

B. F. REED, *Treas.*
SIDNEY LEECH, *President.*

202 *Defendant's Exhibit "Fish Joint Contract, June 6, 1855."*—K. G. W., *examiner.*

BOSTON, *June* 6, 1855.

W. E. COFFIN, *Ag't Pembroke Iron Co., Boston:*

DEAR SIR: I am authorized by Mr. John Childe, general agent of the Mobile & Ohio R. R. Co., to contract with you for 133 gross tons of splicing bars, as per drawing which Mr. Ralph Gookins will furnish, to be manufactured by you at Pembroke, Maine, of first quality, tough, and strong iron, each bar to be 18 inches long, one-half of them to be punched with two round holes in each end to receive a $\frac{7}{8}$ round bolt, and the other half to be punched with two square holes in each end, as shown on the drawing, to be delivered at our mill, at South Boston, $\frac{1}{3}$ in July, $\frac{1}{3}$ in Aug't, $\frac{1}{3}$ in Sept. The price to be $3\frac{1}{4}$ cents per lb. for the bars furnished and delivered, but to be weighed before they are punched. If, at the times of delivery, the Mobile & Ohio R. R. Co. want a credit of four months you are to grant it, by adding interest, and they will make note satisfactory to you.

Respt. yours,

B. T. REED,
For J. CHILDE,
& Gen'l Ag't M. & O. R. R. Co.

The words "in each end" are twice interlined with our consent.
W. E. COFFIN, JR.

B. T. REED, Esq.:

DEAR SIR: Your proposition, of which the above is a copy, was this day received, which we accept, and will perform it promptly, unavoidable accidents excepted.

W. E. COFFIN, SR.,
Pembroke Iron Co.

BOSTON, *June 6th*, 1855.

203 *Defendant's Exhibit "Mobile and Ohio Railroad Bolts."*—K. G. WHITE, *Examiner.*

BOSTON, *July* 7, 1855.

LYMAN KINSLEY, Esq.,
Agent K. Iron and M. Co.:

SIR: I am authorized by Mr. John Childe, general agent and superintendent of the Mobile and Ohio Railroad Company, to contract with you for (60,000) sixty thousand iron screw-bolts, to be manufactured of first-rate fibrous iron, $\frac{7}{8}$ inches round, $3\frac{1}{2}$ inches long, under the head, which is to be round, $\frac{3}{4}$ths of an inch of the bolt next to the head to be

square on the diameter, the thread to be cut 1½ inches or ⅝ of an inch more than the thickness of the nut, which is to be ¾ inch.

For which I will pay you 6¾ cents per pound, in the note of the Mobile and Ohio Railroad Company, payable in Boston in four months. The railroad company will make the note satisfactory to you, or they will pay the bill in cash, with a discount of three per cent.

The bolts are to be packed in boxes or kegs and delivered at the wharf of the Bay State Iron Company, in South Boston, free of any charge for packages or teaming, one-third before the thirtieth day of July, one-third in August, and one-third in September next.

Yours, respectfully,

B. T. READ, *Treas.*

BOSTON, *July* 7, 1855.

B. T. REED, Esq., *Treas.:*

DEAR SIR: Your proposition, of which the annexed is a copy, is this day at hand, which we accept and will perform it promptly, unavoidable accidents only excepted.

Yours, respectfully,

LYMAN KINSLEY, *Ag't.*

204 JOHN B. WINSLOW, a witness produced and sworn on the part of the defendants, being duly sworn, in answer to interrogatories propounded to him by S. D. LAW deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. John B. Winslow; I am sixty-one years of age; I reside at Boston, Massachusetts, and am at present advisory to the manager of the Boston & Lowell Railroad.

2. Q. Were you ever superintendent of the Boston & Lowell Railroad; and, if so, when did you begin to act as such superintendent?

A. I was superintendent of the Boston & Lowell Railroad; February 1st, 1856, I commenced acting in that capacity.

3. Q. What kind of joints for holding the ends of the rails together was used on that road when you went there as superintendent?

A. What is called the Trimble splicer-joint. It was a piece of wood five feet long, three by five inches, held to the rails by four bolts three-quarters of an inch in diameter; there were two holes on each rail, the splicer extending two and a half feet on each rail.

4. Q. What was the form of the bolt-hole in the rails through which these bolts passed which held the splice and rail together?

A. They were elongated holes an inch long by a large three-quarters of an inch up and down.

5. Q. Was there anything connected with those joints used on the road at that time which then attracted your attention and led you to examine them; and, if so, what?

A. They were the first I ever saw for splicing the ends of the rails. It struck me very favorably indeed as preventing the rails from "smudging" at the ends, also keeping the tracks in line in case of an accident.

6. Q. How long after you began to act as superintendent was it that your attention was called to this joint and you examined its construction?

205 A. 'Twas a very short time, probably a fortnight, after I became superintendent. The president, William Parker, and myself went over the road, and then I saw it.

7. Q. Do you know anything about the Boston & Lowell Railroad having some rails made for it by the Bay State Iron Company?

A. In the spring of '56 we had what I call a peculiar rail made. It was wider at the top than those we had used. They went by the name of the Parker rail.

8. Q. Look at the rail now shown you, marked Defendant's Exhibit, Boston & Lowell Rail, 1856, and state whether the rail is one of the kind referred to in your last answer?

A. It is.

9. Q. In those rails furnished that road in the spring of '56 by that company, state what was the shape of the hole punched through the rails for fixing the splice thereto.

A. It was an inch long by three-quarters large.

10. Q. Were any of those rails laid down on that road in that year?

A. They were.

11. Q. What was the size bolt used for fixing the splice bar to those rails?

A. Three-quarters of an inch in diameter.

12. Q. What was the object in having those holes larger than the diameter of the bolt used?

A. To allow for expansion and contraction of the rails.

13. Q. Do you know about how many of those rails were furnished by that company at that time?

A. I cannot say, sir.

Cross-examined:

14. X Q. By whom was your attention called to the peculiarity of construction of the joint to which you have referred which led you to make an examination thereof?

206 A. Mr. Parker, the president of the road.

15. X Q. Had you been connected with the Boston & Lowell Railroad in any capacity prior to your assuming the position of its superintendent?

A. I had.

16. X Q. In what capacity?

A. I was a machinist and locomotive engineer.

17. X Q. How long had you occupied those positions?

A. I should think that I was machinist two years and a half, and locomotive engineer six and a half years. This was eight years prior to my taking the position of superintendent. I was eight years away from that road before I went back a superintendent.

18. X Q. Please describe the position of the two holes on each rail to which you have testified in your answer to the 3d direct interrogatory; that is, in reference to what you call the Trimble spliced joint.

A. You mean the distance? The exhibit, the Boston & Lowell rail, shows the position of the holes in the end of each rail.

19. X Q. Was the object of punching these holes to rivet the rails together?

A. There were no rivets; they were put together by screw-bolts.

20. X Q. Then the object was to screw the rails together, was it not?

A. The object was to fasten the rails together by the wooden splice with the screw-bolts.

21. X Q. What do you mean when you say that the use of this joint prevented the rail from "smudging?"

A. In the old chair one rail would press down below the other, the wheel striking the other rail below the surface.

22. X Q. How would the use of this joint prevent that?

A. Both ends would go down together, keeping a smooth surface.

207 23. X Q. Who was Mr. Trimble, of whom you speak?

A. He was Major Trimble, of Baltimore.

24. X Q. Isaac R. Trimble—was that his name?

A. I don't know, sir; Major Trimble was the patentee of this splice.

25. X Q. Did your road have a license under his patent?

A. Yes, sir.

26. X Q. Do you know whether Mr. Trimble was a railroad engineer?

A. I can't say. He was formerly connected with the Philadelphia, Wilmington & Baltimore Railroad.

Redirect by Mr. LAW:

27. X Q. To what extent was this Trimble splice or joint in use on the Boston & Lowell Railroad when you went there as superintendent?

A. I should think for about three miles.

Recross by Mr. BETTS:

28. X Q. Is the Trimble splice still in use on the Boston & Lowell Railroad?

A. It is, sir; but for the last three years they have abandoned it.

29. X Q. Why have they abandoned it for the last three years?

(Objected to as immaterial.)

A. They have adopted an iron one, which is better.

30. X Q. Why is the iron one better?

(Same objection.)

A. It is stiffer, and does not decay, and we have no holes in the rails.

31. X Q. Are there any holes in the side-plates?

A. There are no side-plates; it is a flat piece of iron.

208 32. X Q. On one side only?

A. Right on the bottom; there is a nick in the ends of the rails through which a spike goes to prevent the rail crawling.

JOHN B. WINSLOW.

Sworn to before me this 10th day of October, 1876.

KENNETH G. WHITE,
Examiner, &c.

FRANKLIN HENDERSON, a witness produced and sworn on the part of the defendant, deposes and says:

(Defendant's counsel states that this is the witness referred to in his statement made in the deposition of John H. Reed, and whose name is not given in the answer.

Complainants' counsel makes the same objection to each and every interrogatory and answer of this witness as was noted in the deposition of Mr. Reed.)

1. Q. What is your name, age, residence, and occupation?

A. Franklin Henderson; I am fifty-eight years old; I reside at Somerville, Massachusetts, and am superintendent of streets in that city.

2. Q. Were you ever connected in any capacity with the Boston & Lowell Railroad; and, if so, in what capacity, and from what time to what time?

A. I was employed with them from 1848 to 1864 as rail layer and track repairer.

3. Q. Do you know anything about that road having obtained any rails from the Bay State Iron Company?

A. We had rails they said come from there.

4. Q. Do you know Mr. John B. Winslow, and was you on that road the time he went there as superintendent?

209 A. I know him, and he was on that road.

5. Q. When was it, with reference to the time when Mr. Winslow became superintendent of that road, that such road obtained the rails which were said to come from the Bay State Iron Company?

A. It was the first year that he was there.

6. Q. Did you help lay down any of those rails?

A. I did.

7. Q. Were they laid down the same year they were obtained?

A. I laid some of them; I don't know whether they were all laid or not.

8. Q. How were the ends of such rails fastened together?

A. With splice woods and bolts.

9. Q. Did the bolts go through the splice woods and the rails?

A. Yes, sir.

10. Q. What was the shape of the hole through the rails compared with the shape of the bolt that passed through them?

A. The hole through the rails was about one inch by three-quarters; the bolt used was a round bolt three-quarters of an inch in diameter.

11. Q. Is the bolt placed in the "Exhibit Boston & Lowell Rail, 1856," like the bolt you used to fasten those rails and splices together, or different therefrom?

A. It is the same kind of bolt.

12. Q. Previous to the use of those rails, which were obtained, as was said, from the Bay State Iron Company, had you laid any rails upon the Boston & Lowell Railroad which had through them elongated holes, which were like those in the rails which came from the Bay State Iron Company?

A. I did lay a few the year before.

13. Q. How many, and at what place on that road?

A. I think I laid about one hundred near the four-mile post at College Hill.

14. Q. Was any splice used with such rails; and, if so, what kind of one?

210 A. A wooden splice and bolts, the same as the other.

15. Q. What sized bolt was used for those rails you laid near the four-mile post?

A. Three-quarters of an inch bolt, round; three-quarters of an inch in diameter.

16. Q. What was the size of the holes through the rails through which such bolts passed?

A. An inch long and three-quarters high.

17. Q. Were those rails which you laid down near the four-mile post in use when Mr. Winslow came out to that road as superintendent?

A. They was.

Cross-examined by Mr. BETTS, without waiving objections:

18. X Q. Was the wooden splice you have spoken of used on one or both sides of the rail?

A. On one side.

FRANKLIN HENDERSON.

Sworn to before me this 10th day of October, 1876.

KENNETH G. WHITE,
Examiner, &c.

Adjourned to to-morrow morning at half past 10.

NEW YORK, *October* 11, 1867.

Met pursuant to adjournment.

Present, counsel as before.

R. E. RICKER, a witness produced and sworn on the part of the defendants, being duly sworn, in answer to interrogatories propounded to him by S. D. LAW answers as follows:

1. Q. What is your name, age, residence, and occupation?

212 A. Robert E. Ricker; superintendent of the Central Railroad of New Jersey; I am forty-eight years of age, and reside at Elizabeth, New Jersey.

2. Q. Were you ever employed on the Rochester and Syracuse Railroad; and, if so, in what capacity, and when?

A. I commenced on that road, first, November 1st, 1850, as principal assistant engineer of the Rochester and Syracuse direct line, which was a new line.

3. Q. Were you ever in the employ of the Oswego and Syracuse Railroad; and, if so, in what capacity, and when did commence your employment on that line?

A. I was employed temporarily on that road in 1853 and in 1854; I was engineer of the tunnel extension on that road in the city of Oswego.

4. Q. Have you any acquaintance with what used to be called the compound rail used on railroads; and, if so, when first did you see or know such rail?

A. My first remembrance was seeing it in actual use on the Utica & Schenectady Railroad in the fall of 1850.

5. Q. Look at the half of the rail now shown you, and state if that is a part of one form of the compound rail.

A. It is; this is not the exact form that was used on the road that I first saw it; it is the some general form.

(The part of rail referred to in the last question and answer is put in evidence by defendant's counsel, as illustrating a section of one-half of the compound rail described by the witness John H. Reed, in his testimony taken in this case yesterday, and is marked Defendant's Exhibit Section of One-half of Compound Rail, K. G. W., ex'r.)

(Here follows diagram marked page 211.)

6. Q. When first did you ever have any knowledge of the mode

213 of connecting the ends of two rails as used on the Oswego & Syracuse Railroad, to which you referred?

A. That was November, 1850; also when I first went to Syracuse on that road.

7. Q. Did the tracks of the Rochester and Syracuse new line and the track of the Oswego and Syracuse Road lie contiguous, or side by side, for any distance; and, if so, about how far?

A. From a point west of the Syracuse depot for a distance of three miles the tracks of the direct line were located, built, and laid close up alongside the tracks of the Oswego and Syracuse Road and the Erie

Canal, so close as to require moving the tracks of the Oswego and Syracuse Road in several places.

8. Q. Describe the rail-joint fastening used on the Oswego and Syracuse Road when you first became acquainted with that road in 1850, describing the appearance of the joint as it was when the rails were laid down and the joint fixed.

A. The rail-joint fastening was composed of two fish-plates, one on each side of the rails at the joint, with four holes in the bars for bolts passing through the same and the rails, and with a key passing through each bolt, to tighten the same and hold them in position.

9. Q. Look at the ends of two rails now produced, and the two fish-plates or bars now produced, and the bolts and keys now produced, and state whether such rails and fish-plates and bolts, supposing the fish-plates to be placed on each side of the rails, and the bolts passed through the holes in those fish-plates and the rails, represent the kind of rail-joint you saw on the Oswego and Syracuse Railroad in 1850.

A. It is the identical joint.

10. Q. Did you at that time, in 1850, see any of the fish-plates in use in the rail-joints on that road so as to know what was the form of the hole in the fish-plates through which the bolts were passed? And,
214 if so, state what was the form of such holes with reference to the size of the bolts used which passed through such plates and the rails.

A. I had occasion to see and examine them quite often during the time named, and I state that the holes in the fish-plates were oblong or of greater diameter in the direction of the length of the plate.

11. Q. Look at the fish-plates referred to in the ninth question, and now produced, and state whether the holes in such plates are like or unlike the holes you saw in the fish-plates on that road in 1850.

A. They are substantially the same.

12. Q. Were the bolts that were used in fastening those plates and the rails together, as you then saw on that road, round, or what was their shape?

A. They were round, made with a rivet head and key slot.

13. Q. You have stated that the tracks of the Oswego & Syracuse Road had to be moved in several places; why did they have to be moved—for what purpose?

A. To make room for the tracks of the Rochester & Syracuse direct road.

14. Q. In what capacity were you at that time employed on the
210 Rochester & Syracuse road?

A. As principal assistant engineer; I had more particular charge of the bridges, buildings, and tracks.

15. Q. And did you personally assist in the moving of the tracks of the Oswego & Syracuse Road you refer to?

A. I personally supervised the entire work.

16. Q. In moving those tracks of the Oswego & Syracuse Road, did you have occasion ever to separate the joints and take off the fish-plates?

A. We did, in many instances.

17. Q. State whether, in the instances in which you separated such joints and took off the fish-plates, the holes in such fish-plates were of the same form you have described previously in your examination, or different.

215 A. They were the same form—oblong.

18. Q. Do you know to what extent the kind of rail-joint you

have described as being in use on the Oswego & Syracuse Road, in 1850, was in use on that road?

A. It was in use on the entire length of road between Oswego and Syracuse—thirty-five miles.

19. Q. What was the purpose or object of having the holes in the fish-plates oblong or of longer diameter lengthwise of the plate than the diameter of the bolt?

A. To allow for the material expansion and contraction of the rails in hot and cold weather.

20. After you went onto the Oswego & Syracuse Road, in '53, were any rails laid on that road, to your knowledge, the joints of which were made with fish-plates having oblong holes and using such bolts as you have described, to connect such fish-plates with the rails; and, if so, to what extent?

A. There were none, except those originally laid in the road, to my knowledge.

(The two end of rails produced and referred to in question nine and subsequent question, and the two fish-plates so referred to, and the four bolts, keys, and washers are put in evidence by defendant's counsel, and are marked Defendants' Exhibit Oswego & Syracuse Rail-joint, 1850, K. G. W., ex'r.)

(Here follows diagram marked page 216.)

Cross-examined by Mr. BETTS:

21. X Q. Do you know where the rails, fish-plates, bolts, &c., were made, which you say you saw on the Oswego & Syracuse Railroad in 1850?

A. I cannot state positively, for this reason: They were laid about two years before I went there. My remembrance is, they were all made in England.

22. X Q. Had you any personal knowledge of the time they were laid, or do you state that from hearsay?

217 A. I have no positive knowledge; I only know that the road was in running operation in the fall of 1850.

23. X Q. Did you hear where such rails, fish-plates and bolts were made in England?

A. Not to my remembrance.

24. X Q. Do you know through whom they were imported?

A. I do not; I only know the party who ordered them.

25. X Q. Who was that?

A. Mr. Hutchinson, chief engineer and president of the road; Waldo Hutchinson, I think his name was; he is since dead.

26. X Q. From what time to what time were you engaged on business of laying the track of the Rochester & Syracuse Road?

A. In the years 1851 and 1852.

27. X Q. Did you see and examine any of said fish-plate joints before you commenced that work?

A. Yes, sir; many times; as early as November 1st, 1850.

28. X Q. Did you, at or about that time, know of the use of any such joint on any other railroad, I mean joints with two iron fish-plates to each joint with elongated holes in the fish-plates, and bolts through the rails and fish-plates?

A. No, sir; this is the first one of the kind I had ever seen up to the date mentioned.

29. X Q. When first after that did you ever know of the use of any such joint on any other road?

A. I had personal knowledge of fish-plates of similar form used on several railroads in 1858, 1859 and 1860; but not with the same form of bolts and keys—on the Chicago & Alton Railroad and the Ohio & Mississippi Road; these two roads I remember distinctly; one or two others, I am not positive of.

30. X Q. How long have you been a railroad engineer and superintendent?

A. I have been a civil and mechanical engineer and railroad superintendent for thirty-two years.

218 31. X Q. And during that time you have had a very wide experience in railroads and their mechanical construction, and the apparatus used on them, throughout the country?

A. I have; both in the New England, Middle and Western States.

32 X Q. You say that in 1853 and 1854 you were temporarily employed on the Oswego & Syracuse Railroad, but that during that time none of the joints made with fish-plates, having oblong holes, were laid; what kind of joints were laid on that road during that time when you had occasion to lay any?

A. There was no occasion for renewing or changing any of the joints or rails originally laid.

33 X Q. What was the character of the Oswego & Syracuse Railroad and its road-bed during the period—say from 1850 to 1854?

(Objected to as immaterial and irrelevant.)

A. The road-bed and track was in a poor condition generally.

34. X Q. Was it partly under water?

(Same objection.)

A. Only a small portion of it, in time of freshets.

35. X Q. Were any endeavors made to improve it?

(Same objection.)

A. None that I was aware of.

36. X Q. Why not?

(Same objection.)

A. None that I am aware of, except the general poverty of the road.

37. X Q. Was there any name by which the joint you have described as in use on that road was known to the engineer?

(Same objection.)

219 A. None, except the bye-word name of rattle-trap joint, as I am aware of.

38. X Q. Why was that name given to this joint as used on that road?

(Same objection.)

A. On account of its insecure construction and loose fitting.

39. X Q. What was the defect in the construction of this joint on that road which rendered it so insecure?

(Same objection.)

A. Imperfect fitting of bolts and keys.

40. X Q. When was the road improved and put in good order?

(Same objection.)

A. I can't say from personal knowledge.

41. X Q. Some time after 1854?

(Same objection.)

A. Yes, sir; subsequent to 1854.

42. X Q. Are you now the superintendent of the Central Railroad of New Jersey?

A. I am superintendent and engineer of the Central Railroad of New Jersey.

43. X Q. Does that road use a joint for its rails having two iron fish-plates, one on each side of the joint, with elongated holes in the fish-plates and bolts through the rails and fish-plates?

(Objected to as not proper matter for cross-examination, and as immaterial.)

A. Iron fish-plates are in general use on the Central Railroad of New Jersey; the oblong holes are in the rails instead of in the fish-plates.

220 44. X Q. Are there not oblong holes in the fish-plates also?

(Same objection.)

A. Only in a very small portion of the fish-plates.

45. X Q. Who makes fish-plates for the Central Railroad of New Jersey?

(Same objection.)

A. The Pratt Manufacturing Cmpany, and several other companies.

46. X Q. To what extent are the oblong holes in the fish-plates used on that road?

(Same objection.)

A. I can't state definitely.

Redirect by Mr. LAW:

47. Q. The fish-plates that were in use on the Oswego and Syracuse Railroad in 1850, of what material were they?

A. They were made of iron.

48. Q. Was that road operated from '50 to '54?

A. Yes, sir; it was.

R. E. RICKER.

Sworn to before me this 11th day of Oct., 1876.

KENNETH G. WHITE,
Examiner, &c.

Adjourned to a day of which notice will be given.

221 U. S. circuit court, eastern district of New York.

ASA JOHNSON AND THOMAS J. SANDFORD
vs.
THE FLUSHING & NORTH SIDE RAILROAD Company.

It is hereby consented that the clerk of the U. S. circuit court for the eastern district of Pennsylvania, or his deputy, may be appointed a special examiner in the above cause to take testimony therein on part of defendant.

Dated Oct. 2, 1876.

EDWARD J. CRAMER,
Solicitor for Complainant.
S. D. LAW,
Solicitor for Defendant.

222 United States circuit court, eastern district of New York.

ASA JOHNSON AND THOMAS J. SANFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

Depositions of witnesses on behalf of defendants in above cause, taken before Samuel Bell, clerk of the circuit court of the United States, eastern district of Pennsylvania, at his office, No. 435 Library street, Philadelphia, Pennsylvania, on the 12th day of October, A. D. 1876, and on the 13th day of October, A. D. 1876, in accordance with the 37th rule of the United States Supreme Court in equity, as special examiner, by agreement of counsel, hereto annexed.

Present, S. D. Law, esq., for the defendant and E. J. Cramer for the complainant.

OCTOBER 12TH, 1876.

SAMUEL M. COUPER, a witness produced on behalf of the defendants, being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. Samuel M. Couper. I reside at New Castle, Delaware. I have no special occupation. I am retired from business. I am in my seventy-second year.

2. Q. Were you ever in the employ of the New Castle and Frenchtown Turnpike and Railroad Company; and, if so, when did you
223 first hold a position in that company, and when did you leave that company?

A. I was in the employ of that company commencing on the 1st day of September, 1839, and ending the month of May, 1869.

3. Q. What position did you hold when you went into that company, and did you hold that position during all the time you were with that company?

A. I was appointed secretary and treasurer on the 1st of September, 1839, and held that position all the way through.

4. Q. While you was with that company did you hold any other position besides that of secretary and treasurer, and, if so, what; and when did you begin to act in such other capacity, and how long did you continue to hold such position?

A. I did; I was appointed agent and superintendent of the company on the first April, 1848, and continued to hold it until I left the company.

5. Q. Who was the secretary and treasurer of the company, if you know, before you were appointed, and how long did he hold the place?

A. My father, James Couper, was the first treasurer of the company, and he was also appointed secretary in 1835; he was the treasurer of the turnpike companies out of which the railroad grew, and he continued to hold that office until the time of his death.

6. Q. Were you appointed his successor at the time of his death?

A. Yes, sir.

7. Q. Do you know when that road first began to lay rails and act as a railroad company?

A. Somewhere about 1831; I couldn't give the precise time.

8. Q. Before you began to act as secretary and treasurer had you

been more or less with your father and about that road, so that you personally knew about that road, what they were doing, and what kind of railroad track they used?

224 A. I was in my father's office, I think, about two (2) years before I was appointed. I had personal knowledge of what they were doing, and what kind of track they used.

9. Q. And did you have such knowledge before you went into your father's office to help him as assistant?

A. I had.

10. Q. What kind of rail was first used on that road?

A. What we call the strap-rail: it was a rail about two and a half to two and three-quarter inches wide and five-eighths of an inch thick, sixteen feet long; that rail was placed upon yellow-pine string-pieces six inches wide, and the timber rested upon stone blocks.

11. Q. And how were such rails fastened to the string-timbers?

A. The rails were fastened by iron spikes—square iron spikes; the ends of the bars were secured by a spike with a slot in it, which went all the way through the rail and timber, and keyed below the splice-timber.

12. Q. What was the shape of the hole in the rail through which the spike passed?

A. It was what I would term an oblong hole.

13. Q. Was that hole the same size or larger than the spike?

A. It was larger than the spike.

14. Q. Have you had in your possession a piece of one of those flat rails you have mentioned; and, if so, where did you get it, and how long have you had it in your possession?

A. I had in my possession such a piece; I got it from the road; I suppose I have had it some fifteen years.

15. Q. Where is that piece, if you know?

A. A part of that piece was cut off and sent to you (meaning S. D. Law), in New York.

16. Q. When that piece of rail was sent to S. D. Law did you put any mark on it, and, if so, what and where on the rail; and state about how long that piece was?

225 (Complainants' counsel gives notice that he will object to all testimony in regard to this particular piece of rail, and will decline to proceed with the cross-examination of this witness thereon, unless said piece of rail is produced and marked by the examiner for identification.)

A. I had a mark put on it by a cold chisel, I think on the under side; the mark was a cross like this, ×; the piece of rail was about fifteen inches long, I think.

16. Q. Was any different kind of rail put on that road to take the place of the flat rail, and, if so, what kind of rail was put on?

A. There was; it was what we term a T-rail.

17. Q. When was that rail put on on that road, with reference to the time when you was appointed secretary and treasurer?

A. The iron, as near as I can tell now, was imported in 1836, and very soon afterwards they commenced laying it; probably in 1837.

18. Q. How much of that T-rail was put down on the road; I mean to what extent on the road?

A. It was put the whole distance of the road, from New Castle to Frenchtown, sixteen and a half miles.

19. Q. And was that rail for the whole of that distance laid before you became secretary of the company?

A. It was.

20. Q. Did you yourself see that rail as it was being laid on that road?

A. I did.

21. Q. Please describe how that rail was made at its ends for the purpose of making joints between the ends of any two rails.

A. On one end of the rail was a splice-piece, about six (6) inches long, with one end riveted to the bar, and the other end of it had a round hole through it, for the purpose of being riveted on to the end of next bar; the other end of the rail had an oblong hole, longer
226 than it was wide; that hole was intended to accommodate the rail to the contraction and expansion of the bar.

22. Q. You saw such rails being laid down on the road and fastened together with rivets, which passed through the round holes in the end of the splice-piece, did you not?

A. I did.

23. Q. The rivet that passed through the round hole on the end of the splice-piece, did that pass through the oblong hole in the end of another rail?

A. It did.

24. Q. This rivet which was used for so fastening the ends of the rails together, how was that rivet made? I mean did it have any head upon it; and how was the other end fastened, by a key, nut and screw, or how?

A. It had a head, and was fastened by being heated in a small furnace that was following on as they laid the track, and riveted; they had a contrivance that held the rivet in place while it was being riveted on the other side.

25. Q. You say such rails were imported; how did they come to New Castle?

A. They came in vessels from England; at least, that is my impression they came from there; one of the vessels was the Isaac Hicks.

26. Q. You understood it was so stated that they did come from England?

A. Yes, sir.

27. Q. Did you see such rails as you have described while they were being unloaded from that vessel?

A. I did.

28. Q. As they were unloaded did they have the splice-plate riveted on one end as you have described, and were the holes you have described in the splice-plate, and the other end of the bar in such plate and bar as they were unloaded?

(Objected to as leading.)

A. They did so; there were all alike; probably there might
228 have been one here and there knocked off in the handling of the iron, but in general they were all alike.

29. Q. The rivets you have spoken of as used to fasten the rails together, and which had to be heated, do you know whether any of these were brought in the vessel with the rails you have described?

A. My recollection is that the rivets came with the rails.

30. Q. Look at the pieces of rail now shown you, and state whether these pieces represent the two ends of the rails you saw unloaded and put upon that road, in respect to the splice-bar and the way it is fastened to the rail, and the hole in the end of the splice-bar, and the hole in the end of the rail.

A. It does.

(The pieces of rail referred to in the last answer are put in evidence by defendant's counsel, and marked "Defendant's Exhibit New Castle and Frenchtown Rail; Phila., Pa., Oct. 12, '76; S. Bell, examiner.")

(Here follows diagram marked page 227.)

31. Q. After you became connected with that road in the capacity of agent and superintendent did you yourself have any track or side-track on that road laid, of which was used rails like those you have described, and as shown by the exhibit just produced?

A. I had such a track laid shortly after I was appointed agent and superintendent

32. Q. State what that track was laid for, and by what name, if any, it is known, and whether it was connected with the other track by a switch.

A. It is called the south track; it was located on the southwest side of the main track, and was used for storing empty cars principally, and was connected with the main track by a switch.

32. Q. You say you had that track laid shortly after you were appointed agent and superintendent?

A. I think it was about a year after I was appointed.

229 33. Q. Was that track laid of new or old iron?

A. Of old iron.

34. Q. Is that track still down?

A. It was there a few days ago.

35. Q. In laying down that south track, as you call it, did you use any rivets or bolts to hold the ends of the rails together, or how were the ends of the rails fastened?

A. I did not; the rails were fastened in the usual way; that is, by spikes, each side of the foot of the rail, being driven into the sleepers; there was no heavy work to be done on that track.

36. Q. Have you yourself had taken up from that track the ends of two (2) rails like the exhibit now produced, and, if so, when?

A. I had pieces taken up; as to the time, I can't say for any certainty; it was some time during the past summer.

37. Q. Were those pieces taken up from the south track, so called?

A. They were.

38. Q. And the other rails on that south track, were their ends constructed like the ends of the exhibit shown?

A. All those from which I took the pieces were; I did not examine the others particularly; it is a good while since I had anything to do with the road; they were all like that (pointing to the exhibit present) when they were put down.

39. Q. Since 1869, when you left the road in an official capacity, you have very frequently, have you not, seen that portion of the road where that south track is located?

A. Very often.

39½. Q. Has that track been taken up, to your knowledge, since 1869, or since it was laid under your direction?

A. Not to my knowledge; they may have put a bar in of a different kind; sometimes the table of the rail gives away.

At this point, 2 o'clock, p. m., a recess is taken until quarter to 3 o'clock.

3¼ O'CLOCK P. M., *Oct.* 12, '76.

230 Present, Mr. Law and Mr. Cramer.

Examination of Sam'l M. Couper continued.

40. Q. At the time these T-rails were laid on that road, as you have stated, what business were you in, if any?

A. I was engaged in the grocery business up to 1844, although I didn't attend to it much personally; I had a person to attend to it for me.

41. Q. While these T-rails were being laid on that road in New Castle, was there much interest manifested by persons as to the rail, and as they were being put on the road, and by persons accustomed to gather around and see it put down?

(Objected to as immaterial, and as calling for the opinion of the witness as to the mental thoughts of other people.)

A. I recollect a good deal of interest being manifested, as it was a new thing, and was about, I believe, the first that was brought to this country.

42 Q. Were inquiries or surmises made by lookers-on and others as to the oblong hole in the end of the rail?

(Same objection.)

A. There was a good deal of speculation as to what it was intended for.

43. Q. What did you understand to be the purpose of such oblong hole in the end of the rail?

(Objected to on the ground that the witness is not shown to be an expert in mechanics.)

A. We understood pretty well what it was intended for, from the experience connected with the flat bar, that it was intended to allow for contraction and expansion.

231 44. Q. What was the shape or form of that rivet which was passed through the hole in the splice and in the bar?

A. According to my recollection, it was a round rivet.

Adjourned until 9 o'clock a. m., October 13, 1876.

OCTOBER 13, 1876.

Present, Mr. Law, for defendants, and Mr. Cramer and Mr. Betts, for complainants.

Samuel M. Couper cross-examined by Mr. F. W. BETTS.

45. X Q. By what means do you fix the date of commencing to lay the T-rail on the New Castle and Frenchtown Road when you say, in answer to Q. 17, that it was probably in 1837?

A. From my general recollection I can't fix the exact time; if I had access to the company's books I could ascertain very nearly the time.

46. X Q. How could you ascertain very nearly the time from the company's books?

A. Because there is an account opened in the ledger for this second track, in which all the charges connected with that track were entered, so as to show the cost of it. I would also say that I suppose there would be some entry in the minutes of the board of directors to show the order for the purchase of the iron. The company's books and papers have been kept in the company's office at New Castle until a month or six weeks ago, when the company had the office altered into a dwelling-house for their agent, and, in doing so, had the vault in which these books and papers were stored torn out, and the books and papers boxed up, and, as the agent informed me, were sent to

Philadelphia, as the agent informed me, to Mr. Kinney, the
232 superintendent of the Philadelphia, Wilmington & Baltimore Railroad. I have called at the office, and no one seemed to know where those boxes were. Among those papers were the bills of lading for that T-rail.

47. X Q. Through whom were those T-rails, with the splice-plate riveted on one end, imported?

A. I am under the impression that they were ordered through the house of A. & S. Ralston, of this city (Philadelphia).

48. X Q. Is that house still in existence, or has it any successors in business?

A. I think it is not in business, and I am not aware that there is any succession.

49. X Q. Were those rails landed from the vessel in Philadelphia?

A. I think not; there was one cargo landed at New Castle from the ship Isaac Hicks, I think; I think she was a New York ship.

Redirect by Mr. LAW:

50. Q. In your 46 X-question you refer to an account in the ledger for this second track; what track do you refer to by the words "second track"?

A. I refer to the substitution of the T-rail for the strap-rail which we had on the road at first, which was the first track.

S. M. COUPER.

Subscribed and sworn to before me this 13th day of Oct., 1876.

SAMUEL BELL,
Special Exam., &c.

JOHN GORDON, a witness produced on the part of the defendant, being duly sworn, deposes and says, in answer to interrogatories propounded by S. D. LAW, as follows:

233 Q. 1. What is your name, age, residence, and occupation?

A. John Gordon; my age is sixty-seven years; I reside at New Castle, and I am day-watch for the Delaware Iron Company, in the pipe and flue business; Morris, Tucker & Company it used to be.

Q. 2. Were you ever in the employ of the New Castle and Frenchtown Turnpike and Railroad Company, and, if so, when did you begin to work for that company, and when did you leave the service of that company?

A. I was in their employ; I commenced to work for that company in 1830, and let the repairs of the road in 1860; I was in the employ of that company all the time from 1830 to 1860.

3. Q. State the different positions you held in that company, commencing with the time when you first went into their employ.

A. When I first commenced working for that company I was what was termed a rod-carrier for the engineers in locating the route, until after the route was laid, and I still held the same position while the road was grading, taking estimates and setting levels; I went on to the dock to attend to freight business, under Captain Robert A. Barr, in 1835, and stayed there four years; I then left that situation, and went on to the repairs of the road, as supervisor of the track, in 1840, and held that position up to 1860.

4. Q. When you first went into the service of that company had they any track laid?

A. No, sir; the road was not located; I was with the engineers locating the road.

5. Q. What kind of track was first laid?

A. The first track that was laid was laid upon six-inch string-timber, yellow-pine, with a flat strap-rail fifteen feet long, or thereabouts.

6. Q. What kind or shape of holes were those made in such strap-rails? What kind of spikes were used to fasten them down?

234 A. An oblong hole and a square spike, that is, in all the bar except the end hole; the spike in the end of the bar was an oblong spike; that spike went through the timber, fastened underneath; it was necessary to be done, or you could not keep the joints down.

6½. Q. Do you know anything of that road laying a T-rail in place of the strap-rail?

A. Yes, sir.

6¾. Q. Did you see such T-rail as it was being laid?

A. Yes, sir.

7. Q. Do you know how these T-rails were brought to New Castle?

A. By ship.

8. Q. Did you see them as they were being unloaded from the ship?

A. I did. I was occupied all the time on the wharf where the ship laid.

9. Q. Please describe how these T-rails were made at their ends for fastening together.

A. On one end of the rail there was a strap riveted on, about six (6) inches long, and a round hole in the other end of the strap. On the other end of the bar there was no strap, but an oblong hole.

10. Q. When those rails were laid down on the road how were their ends fastened together?

A. By a square-headed rivet heated by a furnace that they had on a car. That rivet was put in by a machine made on purpose for holding the rivet that clamped the bar, and then they riveted the other end.

11. Q. You say that the rivet was "put in;" put in what?

A. Put in through the oblong hole, and through the plate, and riveted there

12. Q. How much of that rail was laid down?

A. Sixteen miles and a half.

13. Q. When was it that those rails were unloaded from the ship at the wharf, with respect to the time when you went on to the dock to attend to freight business?

235 A. My impression, sir, is, that they were unloaded at the wharf in the year 1836. My reason is that it is my impression that it was the year after I went on to the wharf.

14. Q. How long after those rails were received and unloaded was it, to the best of your recollection, that such rails were laid on the road?

A. My impression is that they were laid in 1837—some time in that year.

15. Q. Look at the exhibit marked "New Castle & Frenchtown Rail," and state whether those ends of rails making that exhibit are like or unlike those rails you saw unloaded from that vessel as you have testified?

A. That is the same pattern as the rails that were unloaded from that ship and laid upon the New Castle & Frenchtown Road.

15½. Q. Did you, as supervisor of the track, ever relay any part of that sixteen and a half miles of road; and, if so, when and how much of it?

A. I relaid it in 1846—eight miles and a quarter of it.

16. Q. Why was it relaid, and was any different rail laid down?

A. Some of the ties had given way, and we put new ties down and relaid the same rail.

16½. Q. When you relaid that part of the road did you have occasion to separate any of the joints between any of the rails?

A. Yes, sir; in relaying that road we cut the connections about every ten lengths; that is, we knocked out the rivet and throwed the rail off to repair the track.

17. Q. When you relaid that track did you notice the form of the holes in the splice and in the end of the rail; and, if so, state the form of hole in the rail you then observed?

A. There was a round hole in the plate and oblong hole in the end of the bar or rail.

17½. Q. Do you know anything of a side-track called the south track having been laid under the direction of Mr. Samuel M. Couper, who has testified in this case?

236 A. I laid that track for him while he was agent and superintendent of the road.

18. Q. What kind of rails were put down on that track, and had they or not a construction of splice and holes, such as you have described as on the T-rail, which was laid in 1837, as you think?

A. They had; it was the same iron.

19. Q. Was that south track in use on that road at the time you left the road in 1860, and had it been changed to your knowledge after it had been laid by you?

A. It was there when I left the road, and it has not been changed to my knowledge.

20. Q. What was the purpose, so far as you know, of having this hole in the rail oblong?

A. It was for the contraction or expansion of the iron.

21. Q. You say they used a square-headed rivet to fasten the end of rails together. What was the form of the body of the rivet?

A. It was round, sir; full small for the hole.

22. Q. Full small for which hole?

A. For the oblong hole, to give it a chance to work, for the iron to expand and contract.

Cross-examined by Mr. BETTS:

23. X Q. You say, in answer to the 4th question, when speaking of the first track and strap-rail, "that the spike in the end of the bar was an oblong spike; that spike went through the timber and fastened beneath; it was necessary to be done or you could not keep joints down." Were those oblong spikes used at each end of the bars?

A. They were.

24. X Q. Were they substantially the same size as the holes in the bars through which they went?

A. No; they were rather smaller than the hole in the bar.

25. X Q. How much smaller; any more than is necessary to go through freely?

A. No, sir.

237 26. X Q. You say, in answer to the 10th question, when speaking of the T-rails, that the splice-pieces were riveted to the rail "by a square-headed rivet, heated by a furnace that they had on a car; that rivet was put in by a machine made on purpose for holding the rivet that clamped the bar, and then they riveted the other end." How did they fasten this heated rivet through the rail and splice-piece—by hammering down a head?

A. Yes, sir; by forming a rivet like this. (Pointing to the permanent rivet on the Exhibit New Castle & Frenchtown Rail.)

27. X Q. When this rivet was hammered down in that way was the end of the rail and the splice-piece held firmly together?

A. It was.

28. X Q. Were any means adopted, in riveting the rail and splice-pieces together, to keep the rail and splice-pieces free enough of each other to allow the rail to work past the splice-piece?

A. You could not draw that rivet tight enough to keep the rail from expanding.

29. X Q. Were the rivets hammered down as tight as they could be?

A. No, sir; not by any means.

30. X Q. Were any means adopted for preventing the rail and splice-piece being riveted too tightly?

A. Not that I know of, sir.

Redirect examination by Mr. LAW:

31. Q. You say that the spike used to fasten down the ends of the old flat rail were oblong, and were rather smaller than the hole in the end of the bar. Were those spikes so near the size of the hole in the end of the bar as to prevent the bar moving by contraction or expansion?

238 A. The spikes filled the holes in the end of the bar sideways, but not the oblong way. They were smaller than the length of the oblong hole.

JOHN GORDEN.

Sworn and subscribed before me this 13th day of October, A. D. 1876.

SAMUEL BELL,
Special Examiner, &c.

WILLIAM H. DOBB, a witness produced on behalf of the defendants, being duly sworn to tell the truth, the whole truth, and nothing but he truth, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. William H. Dobb; I am sixty-one years of age; I reside at New Castle, Delaware; I am not now in business.

2. Q. Were you ever in the employ of the New Castle and Frenchtown Railroad Company; and, if so, when did you go into the employ of that company, and when did you leave it?

A. I commenced in their employ in 1834, and left it in 1858.

3. Q. What position did you hold in that company?

A. Superintendent of motive power.

4. Q. When was you appointed to that position?

A. In the year 1835.

5. Q. Do you know anything of that road laying down in their track T-rails; and, if so, when were such rails received by the company, with reference to the time when you were appointed superintendent of motive power?

A. I remember the T-rails coming there the year after I was appointed superintendent, in 1836; they arrived there in a ship or vessel.

6. Q. How long after they arrived there was it before they were put down on the road?

2 9 A. They were put down in 1837, I think, all of them.

7. Q. Did you see these rails being unloaded from the ship and as they were put down on the road?

A. I did.

8. Q. Please describe the construction of the ends of these rails, as they were unloaded and put down on the road.

A. One end of each bar had a plate of iron riveted on it, and the other end of the same bar had an oblong hole in it.

9. Q. Was there any hole in the end of the plate which was riveted on to the rail; and, if so, what was the shape of that hole?

A. There was a hole in the other end of the plate, and it was a round hole.

10. Q. State how the ends of those rails, as they were laid down upon the road, were fastened together.

A. They were fastened by a round bolt or rivet, with a square head; the rivet was heated red hot at the end by means of a little furnace carried on a car; the rivet was put through the holes in the bar and plate, and held there by a clamp, and then a head riveted on by a hammer.

11. Q. This clamp you refer to, do you know where it was made, and had you anything to do with its being made, or directing it to be made?

A. It was made in the company's shop, under my direction.

12. Q. Look at the ends of rails making "Exhibit New Castle & Frenchtown Rail," and state whether such ends of rails show the construction and form of those T-rails that you saw unloaded from the ship, and laid upon the road, as you have testified.

A. That is the exact form in which those rails came here and were laid; the splice-piece was straight; this exhibit is bent a little.

13. Q. Do you know John Gordon and S. M. Couper, who have testified?

A. I do.

240 14. Q. Have you any knowledge or remembrance of Mr. Gordon relaying a part of the track of the New Castle & Frenchtown Railroad, which was relaid with the T-rails you have referred to?

A. I remember Mr. Gordon doing so.

15. Q. How much of that T-rail was laid down when it was first laid down in 1837, as you think?

A. Sixteen miles and a half, the whole length of the road.

16. Q. Do you know what is called the south track of that road, a siding connected with the main track, and used for holding empty cars?

A. I know the track referred to.

17. Q. State if you know where the "Exhibit New Castle and Frenchtown Rail" came from, and where it was obtained, if from any part of the New Castle & Frenchtown Railroad.

A. It was taken out of the south track, so called.

18. Q. Who had it taken out, and when was it taken out of that south track?

A. It was taken out by the supervisor, John Mahoney, or his men, on Tuesday morning last, at the request of Mr. Kinney, superintendent of the Philadelphia, Wilmington & Baltimore Railroad Co., who wrote to me to see it taken up.

19. Q. Did you see the exhibit taken up, and did you bring it with you to this examination?

A. I saw the bars taken up from the south track, saw the ends cut off, and brought them here.

20. Q. When Mr. Gordon relaid a part of that track, as you have

stated, did you see the rails that were taken up and the joints that were separated, if any were separated?

A. I did, a number of them.

21. Q. At that time were the ends of the rails in the same shape, as to splice-bar and holes, that they were when when you saw them taken from the ship and laid upon the road?

A. They were.

241 Cross-examined:

No cross-examination.

WM. H. DOBBS.

Sworn and subscribed before me, this 13th day of October, A. D. 1876.

SAMUEL BELL,
Special Examiner, &c.

NEW YORK, *November*, 24, 1876.

Present, counsel for respective parties.

SAMUEL M. COUPER, as called and sworn as a witness on part of defendants, deposes and says:

1. Q. Are you the same person was examined as a witness in this case in the city of Philadelphia, on the 12th day of October, 1876?

A. I am.

2. Q. You testified on your former examination that among the papers formerly in the company's office, at New Castle, of the New Castle and Frenchtown Turnpike and Railroad Co., there were bills of lading for the T-rail which was imported from England in 1836 and laid down soon after, or the next year. While you were secretary of that company did you see such bills of lading, and were there any other papers about such rail except the bills of lading?

A. I did see the bills of lading, and there were also an article of agreement for the purchase of such rail and a specification describing the quality of iron, the weight of the rails, and the way they were to be made.

3. Q. Look at the papers now shown you and state whether you ever saw them before; and, if so, where?

242 A. I have seen them frequently in the office of that company, at New Castle, while I was secretary and treasurer of the concern.

(The papers referred to by the witness are—

First. Articles of agreement between James Booth, esq., president of the New Castle and Frenchtown Co., and A. & G. Ralston, with reference to the importation of iron rails for said company, and dated Philadelphia, October 10th, 1835, and embracing also a specification as to such rails; and,

Second. A bill of lading of a portion of such rails, imported by the ship Isaac Hicks, of New York, October 17th, 1836; and,

Third. A similar bill of lading of the ship Kutusoff, of Newport, dated August 20th, 1836; and,

Fourth. Statement of account from A. & G. Ralston for the purchase of rails for said road, and the amount due therefor, and the receipt of the same.)

4. Q. Look at the paper now shown you, and state who is the S. M. Couper whose name appears as a witness on such paper to the "agreement and specifications" in such paper.

A. I am the person, and those names are in my handwriting.

(The paper referred to in the last question and the answer is put in evidence by defendant's counsel, and is marked "Defendant's Exhibit Agreement of October 10, 1835, for T-rails for New Castle and Frenchtown Railroad, K. G. W., ex.")

5. Q. Are you acquainted with the signature of James Booth, who was formerly, and in 1835, president of the New Castle and Frenchtown Railroad?

A. I am.

6. Q. Look at the signatures of James Booth, president, to
243 the paper last shown you, and state whether such signatures are in the handwriting of said James Booth inquired of in the last question.

A. They are his signatures, and were made in my presence.

(The bill of lading secondly referred to in the statement following the answer to question 3 is put in evidence by defendant's counsel, with the letter of advice thereto attached, and is marked "Defendant's Exhibit Bill of Lading of October 17, 1836, of Ship Isaac Hicks, K. G. W., ex'r."

The bill of lading thirdly referred to in said statement following answer to question 3, is, with the account thereto annexed, put in evidence by defendant's counsel, and is marked "Defendant's Exhibit Bill of Lading of August 20, 1836, of Ship Kutusoff, K. G. W., ex'r."

The paper fourthly referred to in said statement is also put in evidence by defendant's counsel, and is marked "Defendant's Exhibit A. & G. Ralston's Bill of October 15, 1836, and Receipt thereof, K. G. W., ex'r.")

7. Q. Look at the filing indorsement of the Exhibits Agreement of October 10, 1835, etc., and the Exhibit A. & G. Ralston's Bill, etc., and state in whose handwriting such file-indorsements are, and what position the person making such indorsements held in the company.

A. The indorsements are in the handwriting of my father, James Couper, who was then secretary and treasurer of the company.

8. Q. Do you know in whose handwriting the filing indorsement on the two Exhibits Bills of Lading of the Ships Isaac Hicks and Kutusoff are?

A. I do not; I would not like to say.

S. M. COUPER.

244 *Defendant's Exhibit Agreement of October 10th, 1835, for T-rails for New Castle and Frenchtown Railroad.—K. G. W., ex'r.*

Articles of agreement entered into between James Booth, esq., president, on behalf of the New Castle & Frenchtown Railroad Company, of the first part, and A. & G. Ralston, of the second part, to wit:

The said A. & G. Ralston agree on their part to purchase in England or Wales, and ship for the use and benefit of said railroad company, a quantity of railroad iron and fastenings agreeably to specifications furnished by the said company, the iron to be of superior quality and finish, and to be inspected in England by a competent engineer, if required by said company, at a moderate expense to the said railroad company.

And it is further agreed between the parties that the said A. & G. Ralston are to make the said purchase upon the best terms for cash in England, and that the bill, including one per cent. banker's commission, and interest at six per cent. per annum, together with five per cent. commission on the amount of invoices and charges on said iron, are to be paid in cash by the party of the first part on the delivery of

the invoices and bills lading upon the arrival of the iron at New Castle, the said iron to be shipped in merchantable vessels, and to be insured.

This contract to take effect as soon as ratified by the board of directors of the New Castle & Frenchtown Railroad Company.

Witness our hands.

Philadelphia, Oct. 10th, 1835.

Witness:

W. L. MACTIN, T. F. CAUFFMAN. } to sig of.

A. & G. RALSTON.
ROBT. RALSTON, JR.

245 THE NEW CASTLE & FRENCHTOWN TURNPIKE & RAILROAD COMP'Y,
By JAMES BOOTH,
President.

S. M. COUPER, witness to James Booth.

Specification.

Road 16½ miles in length. Rails, 16 feet long; weight, 45 lbs. to the yard; to be of dimensions and size as the copper pattern; 1 plate (for rails to rest on) to each rail; 1 washer to each rail, per wooden pattern. Connecting-plate to be riveted on each rail, the other end of rail to have an oblong hole.

1 bolt, with square head (to each rail), to pass through the oblong hole and washer, of such length as to allow of being riveted when the rails are laid down;* 10 nails to each rail (as per iron pattern).

The different parts of the wooden patterns to be observed in their size and dimensions, unless they should be at variance with the copper pattern (the copper pattern being the size of the rail as is desired).

The ends of rails to be perfectly square and to be treble rolled.

The whole to be delivered at New Castle on or before April 1, 1836.

T. F. CAUFFMAN, witness to signature of— }

A. & G. RALSTON.
ROBT. RALSTON, JR.

THE NEW CASTLE & FRENCHTOWN TURNPIKE & RAIROAD COMP'Y,
By JAMES BOOTH,
President.

Witness to signature of J. Booth:
S. M. COUPER.

246 (Endorsement for filing:) Article of agreement, &c. James Booth, president, with A. & G. Ralston. Respecting railroad iron. October 10, 1835.

Defendant's Exhibit Bill of Lading of Oct. 17, 1836, *of Ship Isaac Hicks.—K. G. W., ex'r.*

Shipped in good order and well conditioned, by A. & G. Ralston, in and upon the good ship called the Isaac Hicks, of New York, whereof J. B. Ingersoll is master for this present voyage, and now riding at anchor in the port of Cardiff, and bound for New Castle, to say:

	Tons.	C.	
3,629 railway bars, with fittings attached	389	11. 2	16
78 boxes containing sundry railway fittings.....	8	18. 2	9
Tons	398	10. 0	25

(In margin:) 18 rails in dispute; if on board, to be delivered.

*500 lbs. extra.

being marked and numbered as in the margin, and are to be delivered in like good order and well conditioned at the aforesaid port of New Castle (all and every the dangers and accidents of the seas and of navigation, of whatever nature or kind soever, excepted), unto order, or to assigns, he or they paying freight for the said goods as p'r charter party, with average accustomed. In witness whereof the master or purser of the said ship hath affirmed to 5 bills of lading, all of this tenor and date, the one of which bills being accomplished, the other to stand void.

Dated in Cardiff, the 17th day of Oct., 1836.

Weight unknown.

JAS B. INGERSOLL.

247 Deliver the within to Messrs. Thomas Biddle & Co., of Philadelphia.

A. & G. RALSTON.

Deliver the within to the order of J. Couper, esq., treas., &c.

THOS. BIDDLE & CO.

PHILADELPHIA, *Feb.* 27, 1837.

J. COUPER, Esq.,
Pres. N. C. & F. R. R. Co., New Castle:

DEAR SIR: We observe the arrival of the ship Isaac Hicks, with about 400 tons R. R. iron for your co., and we now beg leave to hand you the b'l L. for the same- The invoice for the cargo, together with an ac. for the importation of the same, were handed to Mr. Davidson on the 24th inst. (Amount of our ac., $20,232.23.)

Captain Ingersoll may require money to discharge his crew; will you have the kindness to pay him for the same on account of the freight?

Resp'y yours,

A. & G. RALSTON & CO.

(Endorsement for filing:) Bill of lading for 398 tons rails, per ship Isaac Hicks, of N. York, Oct'r 6, 1863.

Defendant's Exhibit Bill of Lading of August 20, 1836, *of Ship Kutusoff.—K. G. W., ex'r.*

Shipped in good order and well conditioned, by Longridge & Co., in and upon the good ship called the Kutusoff, of Newport, whereof S. Newton is master for this present voyage, and now riding at anchor in the port of Cardiff, and bound for New Castle, to say, 5,286 rail-
248 way bars and 42 boxes, weighing 596.2.2, (In margin: Three of the above bars and two boxes in dispute; if on board, to be delivered), being marked and numbered as in the margin, and are to be delivered in like good order and well conditioned at the aforesaid port of New Castle (all and every the dangers and accidents of the seas and of navigation, of whatever nature or kind soever, excepted), unto order, or to assigns, he or they paying freight for the said goods as p'r charter party, with average accustomed. In witness whereof the master or purser of the said ship hath affirmed to five bills of lading, all of this tenor and date, the one of which bills being accomplished the other to stand void.

Dated in Cardiff, the 20th day of August, 1836.

SIMON NEWTON, JR.

Weight unknown.

On back:								
5,286 railway bars						562	15	3 15
22 boxes, cont'g	7,805 rivets		1	19	1 17			
208 boxes, "	71,956 clamps		21	4	3 19			
39 boxes, "	3,500 resting-plates		4	9	1 25			
3 boxes, "	2,533 washers			4	2 18			
	5,286 bran-plates		4	10	1 14			
	5,286 rivets			17	3 4			
						33	6	2 13
227								
	Tons					596	2	2 0

Invoice of railway iron shipped on board the American ship Kutusoff, Simon Newton, master, from Cardiff to New Castle, U. S., for acc't and risk of the New Castle and Frenchtown R. R. Co., and consigned to order.

249	5,286 railway bars, 16 feet each, 562.15.3.15, at	£8	12	1	£4,854	2	
	Punching do., at		5	00	140	14	
	Riveting do., at		1	3	35	3	6
	5,286 junction plates or braces, 4.10.1.14. 71,956 brad-headed clamps, 208 boxes, 21.4.3.19 at	15	0	0	386	9	4
	5,286 round-headed rivets, 0.17.3.4 7,805 square-headed do., 22 boxes, 1.19.1.17 at	18	0	0	51	9	5
	3,508 resting-places, 39 boxes, 4.9.1.25, at	10	0	0	44	14	9
	2,533 washers, 3 boxes, 0.4.2.18, at		21	0	4	17	11
					£5,517	10	11

CHARGES.

Inspection of 596 tons, at 6d. per ton	14	18	0
Bills lading and stamp		3	6
Insurance on £9,000, at 25 per cent. and policy	124	6	6
	£5,656	18	11

E. E.

London, August 23, 1836.
(Signed) A. & G. RALSTON.

(Copy.)

PHILADELPHIA, *October* 13, 1836.

DEAR SIR: Herewith you have bill of lading and copy of original invoice of railroad iron p'r ship Kutusoff, Cap. Newton.

Yours, r'sp.,

NAT. DAVIDSON.

J. COUPER, Esq., *N. Castle.*

(Endorsement on filing:) Bill of lading, 596.2.2 tons of rails, per ship Kutusoff, of Newport. Cardiff, August 20, 1836.

250 *Defendant's Exhibit, A. & G. Ralston's Bill of October 15, 1836, and Receipt thereof.—K. G. W., ex'r.*

(Per ship Kutuzoff.)

The New Castle and Frenchtown Turnpike and Railroad Co. to A. & G. Ralston, Dr.

1836.

August 23. For cash paid by A. & G. Ralston, London, p'r cargo of rails, plates, clamps, &c., as per invoice rendered		£5,656	18 11
Sundry postages		1	6 7
		£5,658	5 6
£5,658 5 6, at 8 per cent		$27,159	71
Interest from August 8th (average time of payment) to 17th October, = 70 days	$316 86		
Do., to cover remittance, = 90 days	407 40		
		724	26
Banking commission, 1 per cent	$271 60		
Commission for purchasing, &c., 5 per cent	1,357 99		
		1,629	59
Dolls		29,513	56

E. E.

PHILADELPHIA, *October* 13, 1836.

A. & G. RALSTON.
ROBT. RALSTON, JR.

Philadelphia, Oct. 19, '36, received this amount	$15,763 56
Philadelphia, Oct. 21, '36	13,750 00
	$29,513 56

A. & G. RALSTON.

(Endorsement on filing:) Bill of R. R. iron, &c., and receipt from A. & G. Ralston, October 15th, 1836. Dolls., 29,513.56.

251 NEW YORK, *Monday, Dec.* 4, 1876.

Present, counsel for respective parties.

WHEELER TRUESDELL, called and sworn as a witness on part of defendants, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Wheeler Truesdell; age, 69 years; residence, Syracuse, N. Y.; I have been city assessor of Syracuse for the past 6 years.

2. Q. How long have you been a resident of Syracuse?

A. I have been a resident of the city for 12 years. I was born and have always lived within a short distance of the city, at Camillus.

3. Q. Were you ever connected in any way with the Oswego and Syracuse Railroad, and, if so, when, for how long, and in what capacity?

A. I was connected with the Oswego and Syracuse R. R. during 1847 and 1848; a small part of the year 1847 and nearly all of the year 1848 as commissioner, during the construction of the road.

4. Q. What were your duties as such commissioner?

A. To furnish materials for the construction of the road, pay the contractors, and to do the general work as superintendent, such as buying ties, lumber, delivering the iron, making contracts, etc.

5. Q. When you went on to that road as commissioner was the track or any part of it laid?

A. I think not.

6. Q. How much of the track of that road was laid while you was commissioner?

A. I think it all was; I have no recollection of any track that was laid before I was commissioner.

7. Q. You speak of your services embracing, among other things, "delivering iron;" what iron do you refer to, and where was it delivered, and from where taken?

A. Rails I refer to when I speak of the iron. I remember of
252 making the contracts for taking the iron from the banks of the Oswego Canal and delivering it along the line of the road, which was not far distant from the canal, for about half the length of the road, at the lower end.

8. Q. Did you see any of the rails laid upon the Oswego and Syracuse Railroad, and see what was the plan adopted for connecting together the ends of the rails?

A. I saw much of it laid, being on the road much of the time. I saw much of the iron delivered. I saw the kind of joint they used.

9. Q. Please state how the ends of the rails on that road were connected together which you saw laid?

A. They were fastened together by clamps and bolts—that is, the holes in the rails for the bolts were bored after the rails were delivered.

10. Q. What was the shape of the holes through the rails?

A. They were bored with a round bit, drilled, two holes in the end of each bar, according to my recollection; possibly there might have been three in some cases, but I think two generally.

11. Q. How many clamps were used at each joint?

A. Two.

12. Q. What was the shape of the holes, if there were any, in the clamps?

A. My impression is, as to that, though I am not as confident as I am in regard to the others—I think, however, that the hole was elongated, not made round exactly; the object was to provide space for the contraction and expansion of the iron of the rails.

13. Q. And the bolts you speak of, did they pass through the holes in these clamps and in the rails?

A. They did.

14. Q. How were such bolts fastened; by a nut and screws, or how?

A. I think a key was driven through a slot in the ends of the bolts; I am confident that such was the case.

253 15. Q. Look at the ends of the rails and the pieces of iron now shown you, and marked "Defendant's Exhibit Oswego and Syracuse Rail Joint, 1850," and state whether they are like or unlike the ends of the rails you saw laid on that road in 1848, and the clamps that were used to make the joints of such rails.

A. I should think they were the same thing; there are a couple of holes in this (pointing to one of the ends of the rails in the exhibit)

which seem to have been bored twice, I should think; the holes seem to have been bored first too close together, but they may have been made so on purpose, I don't know; the nicks in the base of the rails I should think were made for a spike to go down.

16. Q. State any circumstances which enable you to fix the time when you was the commissioner, as you have stated, on the Oswego and Syracuse Railroad.

A. In the fall—in November of 1847. Mr. Geddes had been the commissioner from the commencement; he was elected State senator at the election of 1847; he resigned immediately after his election, and I was appointed to fill the vacancy. In 1848 Zachary Taylor was nominated for President of the United States, and I cannot be mistaken that that was the year that I was on the road.

17. Q. Is there any other fact connected with yourself which occurred during the time you were on that road?

A. Yes; there is one that I recollect; I was a candidate for county treasurer during that election of 1848, and I was elected.

18. Q. When did you leave that road?

A. I think it was during the month of December, 1848.

19. Q. Have you had any official connection with that road since that time?

A. Not any.

20. Q. How much of that road was laid with rails during the time you were connected with it, as you have stated?

254 A. I think all the rails were laid during that time; the road extended from Syracuse to Oswego during that time—about thirty-five miles.

21. Q. Were the same kind of joints used, to your recollection, for the whole length of the road?

A. I have no recollection of any other joints being used, and have no reason to suppose that there were any other.

WHEELER TRUESDELL.

Sworn to before me this 4th day of Dec., 1876.

JOHN A. SHIELDS,
Examiner.

Adjourned to 5th inst., at 11 a. m.

TUESDAY, *December 5th*, 1876.

Met pursuant to adjournment.
Present, counsel for respective parties.

CHARLES A. CURTIS, called and sworn as a witness on part of defendant, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Charles A. Curtis; age 57 years; reside at Baldwinsville, N. Y.; am a farmer.

2. Q. Were you ever employed on the Oswego and Syracuse Railroad; and, if so, when first, and in what capacity?

A. I was, in the year 1848—October 14th; I was foreman of a gang of men who were engaged in fixing up the road.

3. Q. Were you ever employed and working on that road previous to October, 1848; and, if so, by whom, and for what?

A. I was; I worked for Squire Hibbard as foreman, grading the road, etc.

255 4. Q. When did you commence working as foreman for Squire Hibbard, and how long did you continue acting for him as foreman?

A. I commenced December 13th, 1847, and worked until September 15 or 16 of the next fall.

5. Q. When was the track laid on that road?

A. In the fall of 1848.

6. Q. Did you see them laying the track, and did your duties take you over the road while the track was being laid?

A. I saw them laying the track; my duties did not take me over the road while the track was being laid.

7. Q. Describe what kind of joint or fastening was used, if any, to connect the ends of the rails together.

A. It was what we called "clamps," a piece of iron about 15 or 16 inches long, I should think, with four holes through it, flat on one side and oval on the other, to fit the rails.

8. Q. Were there any holes through the ends of the rails, and how many holes at each end of the rail?

A. Yes, sir; two holes at each end of the rail.

9. Q. What was the shape of those holes through the ends of the rails?

A. I should think they were round.

10. Q. What was the shape of the holes through the clamps?

A. They were not exactly round; they were a little longer lengthwise with the clamps.

11. Q. How many clamps were used for each fastening or joint?

A. There were two clamps, one on each side of the rails.

12. Q. Were bolts passed through the holes in these clamps and the holes in the rails; and, if so, what was the shape of the bolts, and how were they fastened?

A. They were; the bolt was about four inches long, might be
256 a little less, with an oval head and a hole punched through the other end to receive a key; they were a little less than an inch in diameter.

Q. Look at the ends of the rails marked "Def't's Exhibit Oswego and Syracuse Rail Joint," and at the two clamps marked in the same way, and state whether such ends of rails and clamps are like or unlike those you saw laid down on the Oswego & Syracuse Road in 1848.

A. They are just like them exactly.

14. Q. For how long after you went into the employ of the Oswego & Syracuse Railroad, in October, 1848, did you continue on such road, and in what capacity?

A. I think it was between eight and nine years, as foreman; a portion of the time I was on the working-train, but most of the time on the track.

15. Q. During that time that you was such foreman, did you ever have occasion to repair any of the joints or fastenings of that road?

A. I did; that was a great part of the work.

16. Q. When you did so repair such fastenings were the clamps used for such fastenings of the same kind you have previously described?

A. They were.

17. Q. When was the first train run over that road or a part of it?

A. October 14, 1848, if my memory serves me right.

Cross-examined:

19. X Q. In the exhibit of which you have testified there is a notch in the end of the rail; what was the object of that notch?

A. It is for a spike to keep the bar from shoving ahead—to keep it on the joint-tie.

20. X Q. And that spike was always used through the length of the Oswego and Syracuse Road, was it not?

257 A. They were; some of the bars did not have a notch in them, and we cut them in; there was a spike each side of the bar and a notch.

C. A. CURTIS.

Subscribed and sworn to before me this 5th day of December, 1876.

KENNETH G. WHITE,
Examiner, etc.

ROBERT MURPHY, called and sworn as a witness on part of defendants, deposes and says:

1. Q. What is your age, residence, and occupation?

A. I am fifty-three years old; reside in Oswego, N. Y.; am road-master on Oswego & Syracuse division of Delaware, Lackawanna & Western Railroad.

2. Q. When did you first begin to work on the Oswego & Syracuse Railroad?

A. I think it was April 13, 1848.

3. Q. At the time you began to work on that road, was any portion of the track of that road laid?

A. I think not.

4. Q. Did you have anything to do with laying the track or preparing the rails for laying?

A. I did.

5. Q. What?

A. I helped to drill the holes in the end of the rails.

6. Q. How many holes were there drilled in each end of the rail, and what was the shape of those holes?

A. There were two holes in each end of the rail—round.

7. Q. How were those holes drilled?

A. By an upright drill, worked by hand.

8. Q. And what, if any, contrivance was used for holding the ends of the rails while they were being drilled?

258 A. We shoved the rail into the foot, the bottom part of the drill; it was made of cast-iron, I think; there was a stop to let the rail go in far enough for the drill to make the first hole.

9. Q. Did you see any of the rails laid on that road?

A. I did.

10. Q. In laying the rails was any piece or pieces of iron used at the joints to hold the rails together; and, if so, how many at each joint, and what were they called?

A. Yes; there were two; what we call straps or clamps.

11. Q. Were there any holes through such clamps?

A. Yes; four holes in each clamp.

12. Q. How were those clamps and the ends of the rails fastened together?

A. By bolts and a washer and keys; there was a head on one end of the bolt, and a washer and key used at the other end.

13. Q. About how far from the ends of the rails were these holes you speak of made?

A. About an inch and a half or an inch and three-quarters, more or less, from the end; I never measured it; the other hole between five and six inches from that; I have got the rails laying on the road yet; some in use yet.

14. Q. Look at the ends of the rails now shown you, marked "Defendant's Exhibit Oswego & Syracuse Rail Joint, 1850," and state whether the holes in such ends of the rails are like or unlike, in position on the rails, those you helped make or bore on the Oswego & Syracuse Railroad, as you have stated?

A. This piece here does. (Referring to piece having letters "D., L. & W. R. R." painted on the top.)

15. Q. Look at the straight pieces of iron now shown you, having four holes in each, and also marked "Defendant's Exhibit Oswego & Syacuse Rail Joint, 1850," and state whether such pieces of iron are like or unlike the straps or clamps you saw used in laying the track on the Oswego & Syracuse Railroad, as you have testified.

259 A. I think they look just like them.

16. Q. In what year was it that you helped bore the holes in the rails, as you have mentioned, and saw the track laid on the Oswego & Syracuse Railroad?

A. In 1848.

17. Q. The holes in the end of the rail having painted on the top of it the letters and figures "O. & S. Div., 1848," seem to be irregular in shape and not exactly like those in the end of rail having on top of it the letters "D., L. & W. R. R.;" look at the end of the rail first mentioned, and state what, in your opinion, is the cause or reason why the holes therein are irregular.

A. The railroad company were in the habit of getting this iron welded, as we call it; that is, laying a piece on top where it had got marred or flattened down, and the blacksmith used a swedge after welding the piece on, which closes up the hole in some cases; then they don't use the holes.

18. Q. After the end of the rail had been so fixed as you have described in your last answer, if the spliced pieces were to be used again, the holes would have to be bored again or punched out, would they not?

(Objected to as leading.)

A. Yes; if you use the so-called strap or clamps.

19. Q. The holes in the piece of rail marked on top "O. & S. Div., 1848," appear to have been bored or punched more than once; do they or do they not?

A. Yes; this hole here (pointing to the one furthest from the end) seems to have been punched after it was bored; this (pointing to the other) seems to have been closed up some; I think both of them have been punched.

20. Q. Have you been in the employ of or on the Oswego and Syracuse Railroad all the time since you went there in April, 1848?

A. Yes, sir.

260 Cross-examined:

21. X Q. What was your position on the road when you went there in April, 1848?

A. I went there as a laborer.

22. X Q. Do you know where these pieces of rails came from concerning which you have testified?

A. I couldn't say positively where they came from, but they look like the rails we used on the Oswego & Syracuse Railroad.

THOS. MURPHY.

Subscribed and sworn to before me this 5th day of December, 1876.

KENNETH G. WHITE,
Examiner, etc.

CHAS. A. CURTIS recalled.

1. Q. In your answer to X Q. 19 you say the notch in the end of the rail of the exhibit is "to keep the bar from shoving ahead—to keep it in the joint-tie." Would such spikes driven into those notches prevent the bar from expanding and contracting by heat and cold?

A. Not very much; we generally have a little play between the notches and spike for that purpose.

Cross-examined:

2. X Q. Since the completion of your cross-examination, about twenty minutes ago, you have had a conversation with the counsel for the defendants, have you not?

A. I have.

3. X Q. Are your answers to X Q. 19 and 20 as true now as they were twenty minutes ago?

A. That I couldn't say.

4. X Q. Have you any reason for supposing that a difference of twenty minutes in any way alters the construction and operation of a part of a road built thirty years ago?

A. I don't understand the question.

5. X Q. You stated, twenty minutes ago, that the notch in the
261 end of the exhibit rail was for a spike "to keep the bar from shoving ahead, to keep it on the joint-tie;" you now say that you can't say whether your answer is as true now as it then was; why can't you say so?

A. I can say so; the reason I answered the question as I did was because I did not understand the question; they are as true now as they was twenty minutes ago.

C. A. CURTIS.

Sworn to before me this 5th day of December, 1876.

KENNETH G. WHITE,
Examiner, etc.

ALFRED WILKINSON, called and sworn as a witness on part of defendant, says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Alfred Wilkinson. I am in my forty-sixth year; reside at Syracuse, N. Y.; I am a banker.

2. Q. Have you any knowledge of the rail-track laid originally on the Oswego & Syracuse R. R.?

A. I have.

3. Q. Had your father anything to do with the organization of that road? And, if so, state if he is alive, and what is his name, and whether you were in his office in any capacity about or previous to the time when the track of that road was first laid.

A. My father's name was John Wilkinson; he died Sept. 19, 1862; he was the chairman of the committee of construction of the board of directors of the Oswego & Syracuse Railroad; he was at the same time

the president of the Syracuse & Utica R. R. I was in the service of the Syracuse & Utica Railroad as an engineer; the engineer's office was in the same room as that of the president. In the winter of 1846 and 1847 the plan of fastening rails together by what were then called clamps was presented to my father.

262 4. Q. State what knowledge you have of the kind of joint or fastening used on the Oswego & Syracuse Railroad, and how you obtained such knowledge.

A. I saw them laying the rails in 1848; the joint is absolutely identical with this form of fastening before me. (Pointing to the ends of rails and clamps marked Def't's Exhibit Oswego and Syracuse Rail Joint, 1850.)

5. Q. When did you first see any pattern or model of the joint or fastening referred to in your last answer, and where did you first see it?

A. I first saw it in the winter of 1846-'47, in the office of my father; it was a mahogany model, just about the size of the exhibit, with the rails, bolts, and clamps all put in.

6. Q. You say you saw them laying rails on the Oswego & Syracuse Railroad in 1848, and using the fastening you have referred to; please state more fully what was the shape or form of the holes made through the ends of the rails then being laid down, and what was the shape or form of the holes made in the clamps used on that road for fastening the ends of rails together.

A. Round holes through the rails, oval holes through the clamps.

7. Q. In which direction of the clamp was the long way of the oval hole?

A. Horizontal.

Cross-examined:

8. X Q. Are you now connected in any way with the Oswego & Syracuse Railroad?

A. No, sir; I gave up railroading and engineering in 1858.

ALFRED WILKINSON.

Subscribed and sworn to before me this 5th day of December, 1876.

KENNETH G. WHITE,
Examiner, &c.

Adjourned to Dec. 7, 1876, at 11 a. m.

263 THURSDAY, *December* 7, 1876.

Present, counsel for respective parties.

DANIEL L. HARRIS, called and sworn as a witness on part of defendant, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Daniel L. Harris; age, 59 years; reside at Springfield, Mass.; I am a civil engineer by profession; have been president of the Connecticut River Railroad for twenty years past.

2. Q. Have you been personally familiar with the laying of rails on railroads, and if you yourself have laid or helped lay any such rails state when first you began to lay rails?

A. I have been familiar with it all through my experience. I began to lay rails on the Norwich and Worchester Road, in 1839.

3. Q. In the laying of rails for railway tracks is it or not necessary that some provision should always be made in the laying of such rails for their expansion or contraction?

A. It is.

4. Q. How much allowance is made for such contraction or expansion, so far as you know?

A. The necessity varies with the temperature; some attention is paid to the temperature, but ordinarily, in an eighteen-foot rail, an allowance of an eighth to three sixteenths of an inch is made. In practice this is done by putting a chip between the ends of the rails before and while the spikes are being driven in.

5. Q. If a track was laid with rails and the ends of the rails were fastened together by means of iron clamps or splice-bars, on one or both sides of the rails, and such bars and rails were bolted together by bolts filling the holes in the splice-bars and the holes in the rails, and no provision for expansion or contraction was made by increasing the size
264 of the holes, either in the bars or in the splices, over the size of the bolts used, would such a track be a safe or permanent track?

A. I should say it was not safe.

D. L. HARRIS.

Subscribed and sworn to before me this 7th day of December, 1876.

KENNETH G. WHITE,
Examiner, etc.

Counsel for defendant puts in evidence a printed volume called "European Railways," by Holley & Colburn, published in New York in 1857, reference being made to the following pages of said book:

Page 95, chap. VI, last paragraph.

Page 97, title "Fish-joints," at the bottom of the page.

Pages 106 and 107, title "Conclusion."

And also a printed volume, being a Treatise on Roads and Railroads, by W. M. Gillespie, published in New York in the year 1853, reference being made to page 303.

Defendants rest.

265 *Extracts from printed book on European Railways, by Zerah Colburn and Alexander L. Holley. New York, Holley and Colburn,* 1858.

Page 95, chapter VI, RAIL-JOINTS.—The allowance for the expansion of joints is, of course, the same in all countries with equal variations of climate.

Page 97, FISH-JOINTS.—This difficulty (the disturbance of the joints by traffic, previously mentioned) calls for some arrangement which shall both connect the ends of the rails and supply the vertical stiffness necessary for uniform support.

The "fish-joint" was proposed for this purpose in 1847.

It was the original intention to employ two sleepers, six inches apart, at the joints, and to drive a plate, a little wedging, between the jaws of the two chairs and the side of the rail, covering the joint equally on each side. This was never adopted, but, instead, the sleepers
266 were removed, say, twelve inches each way from the joint, and a pair of plates, say eighteen inches long, 3 by $\frac{3}{4}$ inches, bolted together through the rail by four $\frac{3}{4}$ or $\frac{7}{8}$ inch bolts, an allowance being made by oval bolt-holes for the expansion and contraction.

The fish joint, with key-bolts, was first used by Robert H. Barr, of New Castle, Del., in 1843, but with the low American rail it had soon to be discontinued.

Page 106, 107, CONCLUSION.—Third. Expansion must be provided for in any joint to be adapted to American tracks in an American climate. (P. 106.)

The fish-joint is elastic and provides amply for expansion. (P. 107, line 12.)

Extract from a Treatise on Roads and Railroads, by W. M. Gillespie. New York, A. S. Barnes & Co., 1853.

267 U. S. circuit court, eastern district of New York.

ASA JOHNSON AND THOMAS S. SANFORD
vs.
THE FLUSHING & NORTH SIDE RAILROAD Company.

Additional testimony taken on behalf of the defendants, before Kenneth E. White, esq., examiner, under and pursuant to the 67th rule in equity, as amended, of the United States Supreme Court.

NEW YORK, *April* 18, 1877.

Present, E. J. Cramer, esq., counsel for complainants; S. D. Law esq., counsel for defendants.

CHARLES T. PARRY, being called and sworn on part of defendants, says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Charles T. Parry; 55 years old; reside in Philadelphia, and am a locomotive-builder and a member of firm of Burnham, Parry, Williams & Co.; and said firm carry on the Baldwin Locomotive Works, situated in Philadelphia.

Q. 2. When did you become a member of that firm?

A. In 1866.

268 Q. 3. When did you first go into the employ of those works, *as* its predecessors?

A. In October, 1836; then M. B. Baldwin was proprietor of the works; I went there as a boy, to learn the business.

Q. 4. Have you been connected with those works, either as employee or partner, from 1836 to the present time?

A. I have, without intermission.

Q. 5. Were you, at any time, in the drawing-room of those works, where was prepared the drawings or sketches from which the workmen worked in making locomotives; and, if so, when did you go into the drawing or draughting room, and how long did you remain there?

A. I was employed in the drawing-room in making drawings and sketches for the men to work by in making locomotives. I was in the room in 1843; I think I went there in 1842. I was there until about 1858, I think.

Q. 6. In the locomotives made at those works, from 1843 to the present time, was any provision made in connecting the boiler to the frame of the locomotive to allow for the expansion and contraction of the boiler on the frame; and, if so, what arrangement or device was used for such purpose?

(Objected to as leading, and that there is no evidence to show that the witness is competent to speak as an expert in this connection.)

A. There was provision made to provide for the expansion of the

boiler on the frame; the boiler was permanently fastened to the frame at one end, and allowed to slide at the other, to compensate for the expansion, by means of a shouldered bolt passing through a slotted hole which secured the frame in its position, without interfering with the expansion of the boiler.

Q. 7. When such device of a slotted hole and bolt was first used at those works which end of the boiler was permanently fastened to the frame?

A. The rear end; the fire-box end.

Q. 8. To what part of the boiler or engine was the piece fixed in which was the slotted hole?

269 A. At the front end; the slotted hole was in the foot of the cylinder, the cylinder being permanently fastened to the boiler.

Q. 9. When was such device for allowing the expansion of the boiler on the frame first used at those works?

A. That I am not competent to say.

Q. 10. When was such device first used to your knowledge?

A. In 1843.

Q. 11. How long, to your knowledge, was such device used at those works when the slotted hole was in the foot of the cylinder?

A. From 1843 up to 1855.

Q. 12. Was any change made in the arrangement of position of such device on locomotives made at those works; and, if so, when?

A. In 1855 it was changed from the front end of the locomotive to the back end.

Q. 13. When such change was made, which end of the boiler was permanently fastened to the frame?

A. The front end.

Q. 14. In the locomotives made since 1855 at those works has there been provision in all of them for the expansion of the boiler on the frame; and, if so, has the device used been like that used from 1843 to 1855, or as it was changed in 1855?

A. There has, at all times since, been provision made for expansion on the locomotives made at these works, but not all like that; during the last six years we have dispensed with bolts and slots, and used clamps, excepting the brace supporting the foot-board at the back end of the frame, where we have always, since 1855, used a bolt and slot; from 1855 to about six years ago we used the device of bolt and slot as changed in 1855 to the rear end of the boiler.

Q. 15. In the locomotives built from 1843 to 1858, when you was in the draughtsman's room, did you yourself have anything to do in furnishing to the workmen the drawings for the engines they were building, and seeing that the engines were made according to such drawings; and, if so, what did you do?

270 A. I gave them sketches taken from the original drawings, which I took off myself, and explained to the workmen how they were to fit up the work according to those sketches; the original drawings were never taken out of the drawing-room for the purpose of building engines—never taken to the workmen; I saw and knew that the work was made according to them.

Q. 16. Have you any original drawing belonging to those works which shows the device you have described of a bolt and slotted hole for permitting expansion of the boiler on the frame, such as was used from 1843 to 1855?

A. I have drawings here which show the device used from 1843 to 1855.

(Defendant's counsel puts in evidence the drawing referred to by the witness, which is marked Defendant's Exhibit Drawing No. 1 of Baldwin Locomotive Works, K. G. W., ex'r.)

(Here follows diagram marked page 271.)

(It is consented by counsel that copies of such part of said original drawing as show the device in question may be substituted for the original drawing produced, the original drawing to be produced at the argument if complainants' counsel desires.)

Q. 17. On the drawing produced by you is there any date which enables you to state when such drawing was made?

A. There is a date—June, 1843—on such drawing; that date is put on by myself, and I believe I worked in 1843, at that time.

Q. 18. The sketches you have mentioned that you made for the workmen to work from, from 1843 to 1855, were any of them made from the original drawing now produced?

A. Yes, sir.

Q. 19. Is there any indorsement on the original drawing produced by you which shows what locomotives have been constructed at your works according to such drawing?

A. There is; an endorsement of names of locomotives built
272 according to such drawing, and the roads for which furnished; the indorsement shows eleven (11) locomotives, for five (5) different roads.

Q. 20 Do the books of the company show when those locomotives included in such indorsement were finished?

A. They do.

Q. 21. Have you prepared a list of the locomotives shown in such indorsement on such drawing, and which shows the number of the engines mentioned in such indorsement, and when such engines were completed; and, if so, produce it?

(Objected to as not the best evidence of the fact intended to be proved.)

A. I have, and produce it; it was taken from the register of the engines made at our works.

(Paper produced by the witness is put in evidence by defendant's counsel, and is marked "Defendant's Exhibit Extract from Register of Locomotives of Baldwin Locomotive Works, K. G. W., ex'r.") [Exh. p. 111.]

Q. 22. Have you the book—the "Register of Engines" of the Baldwin Locomotive Works, referred to in your last answer, and from which the last exhibit was prepared, and, if so, produce it?

A. I have, and do produce it.

(The said book is put in evidence by complainants' counsel, it being consented that a copy of these entries may be substituted therefor, the book to be produced on the argument if required.)

Q. 23. Look at the list prepared by you from such book and state which of the locomotives mentioned thereon correspond with the indorsement of locomotives found on the original drawing, dated June, 1843, produced by you.

A. The first eleven on such list, from "Camel" to "Chattahoochee," both inclusive.

Q. 24. Such list also contains the names of nine other engines completed during the year 1845; did such nine engines have in their con-
273 struction the device of the bolt and slotted hole which you have

A. It was, and for this reason we allowed about ½ inch for the length of the slot.

Q. 43. Have you made a sketch of the arrangement of bolt and slotted hole used on the engines built at your works when that device was used at the rear end of the boiler?

A. I have, and produce it.

(The sketch produced by the witness is put in evidence by defendant's counsel, and is marked Defendant's Exhibit Sketch No. 1 of Slotted Hole and Bolt, K. G. W., ex'r.)

(Here follows diagram marked page 276.)

Q. 44. To what is the part of such sketch marked "bearer" attached?

A. To the boiler at the fire-box end.

Q. 45. Have you made a sketch of the device which has been used at your works on locomotives during the last six years for allowing the expansion of the boiler on the frame, and which you call clamps; and, if so, produce it?

A. I have, and produce it.

(The sketch produced in evidence is put in evidence by defendant's counsel, and is marked Defendant's Exhibit Sketch of Clamp, K. G. W., ex'r.)

(Here follows diagram marked page 275*b*.)

Q. 46. The clamp-pieces marked A and B on such sketch are fixed to the frame or to the boiler, which?

A. They are fixed to the boiler, and as the boiler expands they slide on the frame.

Cross-examined by Mr. CRAMER:

X Q. 47. From whom did you obtain the original drawings from which you say you made sketches for the workmen to guide them in building the locomotives in 1843?

278 A. The drawing was the property of the locomotive works and I was employed by them; the drawings were on the table of the property-room of the works, and from them I made the sketches.

X Q. 48. Do you know who made the original drawing?

A. William Pettit, of Philadelphia.

X Q. 49. Was he employed at the Baldwin Works at that time?

A. He was.

X Q. 50. In what capacity?

A. As draughtsman and constructor.

X Q. 51. Is he now employed at those works?

A. He is not.

X Q. 52. Do you know where he is now?

A. He is living in Philadelphia, in Mt. Vernon street, near 22d; I don't know the number.

X Q. 53. Do you know how long since he left the employ of the Baldwin Works?

A. About the year 1866.

X Q. 54. In the locomotives made in 1843, 1845, and from then down to 1855 did the bolt of which you have spoken in your direct examination fit closely in the upper and lower rail of the frame?

A. It did.

X Q. 55. When, I mean in what month, if you remember, did you

make the change in the hole and bolt from the front to the rear, to which you have testified?

A. I cannot remember the month; it was in the first part of the year.

X Q. 56. Is there anything in your books which will show the exact date of such change?

A. I don't know that there is.

X Q. 57. Did you personally make sketches for the workmen to build by, after the change referred to?

A. Yes.

X Q. 58. Can you state when you first made such sketches?

A. In the early part of 1855, but I can't tell the exact time.

X Q. 59. Are there any original drawings that you know of
281 which would show the change of which you have testified, and also show the exact date of such change?

A. I believe there are a number of drawings in our drawing-room, in the works, that will show the change; I don't know that they will show the exact time of the change; the register may show the engines that were made after such change.

X Q. 60. Please look at the register and see if you can discover therefrom the date of the first construction of locomotives having the change to which you have testified.

A. I find two engines—"Cherokee" and "Chestatee," Nos. 675,677—completed December 19th and 31st, 1855.

X Q. 61. Then you were in error, were you not, when you said that the change was made in the early part of the year 1855?

A. I was; it was in my mind that it was the early part of 1855, but by referring to the book I find I was mistaken a year, and I ask to have this correction made in all my testimony wherein I have used the year for that purpose.

X Q. 62. Was the change in those locomotives made at the time they were constructed, or were they afterwards altered?

A. It was made afterwards—in the spring of 1856.

X Q. 63. In the locomotive constructed in 1843 was there a shouldered bolt used, as there was in 1845, as is shown in the sketch?

A. A shouldered bolt was used in 1843, in the manner that I have written upon the drawing.

X Q. 64. Look at the drawing now shown you, marked with a stamp "Baldwin Locomotive Works, B. P. W. & Co., April 10, 1877," and also marked with a stamp "R. E. Ricker & Co., New York, April 11, 1877," and state whether it correctly represents a section of a locomotive, showing the slot in the foot of the cylinder and a bolt passing through the upper and lower rail of the frame, to which you have testified in your direct examination.

(Here follow 2 diagrams marked pages 279 & 280.)

A. This drawing represents the manner in which the foot of the cylin-
282 der was held in connection with the frame and allowed to slide thereon by means of a shouldered bolt and a slotted hole in the engines, alluded to in that list Exhibit Extract, &c., as built in 1843; the arrangement as to the lower rail was varied to suit circumstances, as it sometimes included the foot of a brace, as of a snow-plough, cow-catcher, &c., but not material to the fastening or connecting of the cylinder to the frame so as to allow for expansion.

(The drawing referred to in the question is marked A B, for identification.)

X Q. 65. Of what metal was the frame constructed?

A. Of wrought-iron usually.

X Q. 66. Did the bolt fit tightly in the frame, as shown in the drawing?

A. It did.

X Q. 67. What was the object of the change which you say was made about six years ago, and which is shown in Def't's Ex. Sketch of Clamp, K. G. W., ex'r?

A. It was for the purpose of giving more wearing surface and to make a more durable job of it.

X Q. 68. Do you consider this to be an improvement on the devices used by you at your works from the year 1843 down to the date of such change?

A. I do.

Redirect by Mr. LAW:

Re-D. Q. 69. The bolt that passed through the upper and lower rail of the frame as shown in the drawing marked "A B," and which fit tightly in the frame, passed also through the slotted hole in the foot of the cylinder; did it or not?

A. It did.

Re-D. Q. 70. And the cylinder as it expanded was permitted to move on the frame and bolt by means of a slot in its foot; am I correct?

A. Yes.

Recross by Mr. CRAMER:

Re-X Q. 71. You cut away the metal in the foot of the cylinder so as to permit it to slide along the frame, do you not?

283 A. Yes.

CHAS. T. PARRY.

Subscribed and sworn to before me this 19th April. 1877.

KENNETH G. WHITE,
Examiner, &c.

Defendant's Exhibit Extract from "Register of Locomotives" of Baldwin's Locomotive Works.—K. A. W., ex'r; R. E. R., April 10th, 1877.

List of engines built by the Baldwin Locomotive Works which had slotted holes providing for expansion.

Name of railroad.	Name of engine.	Builders' No.	Date of completion.
Charleston & Hamburg	Camel	189	Aug. 12, 1843.
" "	Georgia	190	Sept. 15, 1843.
" "	Alabama	191	Sept. 29, 1843.
Central R. R. of Georgia	Columbus	192	Oct. 16, 1843.
Monroe " "	Great Western	187	Nov. 30, 1843.
Charleston & Hamburg	Louisiana	202	May 16, 1844.
" "	Arkansas	203	July 29, 1844.
" "	Tennessee	204	Oct. 21, 1844.
Madison & Indianapolis	Columbus	211	Nov. 13, 1844.
Cen. R. R. & B. Co.	Alabama	208	Dec. 2, 1844.
" " "	Chattahoochee	209	Dec. 19, 1844.
Western & Atlantic	Cherokee	215	March 15, 1845.
Phila. & Columbia	Atlas	232	April 30, 1845.
Central R. R. of Georgia	Alatamoha	219	June 21, 1845.
" " "	Wiawassee	220	July 1, 1845.
Georgia R. R. & B. Co.	North Carolina	216	Aug. 6, 1845.
" " "	South Carolina	217	Aug. 6, 1845.
Western & Atlantic	Oothcaloga	218	Sept. 1, 1845.
South Carolina	Texas	233	Sept. 4, 1845.
Little Miami	Ben Franklin	235	Sept. 11, 1845.

284 NEW YORK, *April* 20, 1877.

Met pursuant to adjournment.

Present counsel as before.

JOHN THOMPSON, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Thompson; I am 51 years old; I reside at Boston, Mass., and am not at present engaged in any business.

Q. 2. Were you ever employed in the Eastern Railroad; and, if so, when did you go into the employ of that road, and when did you leave it?

A. I went into the employ of that road in March, 1848, and left it in March, 1877.

Q. 3. What position did you hold while in that road?

A. That of gang foreman, general foreman, and master machinist.

Q. 4. During the time you were on that road did you have personal knowledge of the locomotives run by that road and of their construction?

A. I did.

Q. 5. Were there in use on that road while you were there any locomotives so constructed that the boiler as it was expanded by heat could move on the frame of the locomotive?

(Objected to as leading.)

A. Yes.

Q. 6. When first were any such locomotives, to your knowledge, used on such road, and what were the names of the locomotives first used on that road having such construction?

A. In January, 1849, the locomotives Binney and Bryant.

Q. 7. How do you fix the date of January, 1849?

A. By examination of the company's records.

285 Q. 8. Is that date the date of the use or purchase, or what, of such locomotives?

A. Purchase and use.

Q. 9. State, if you know, by whom or what works such locomotives were built.

A. Rogers, Ketchum & Grosvenor, Locomotive Works, Jersey City, N. J.

Q. 10. Please describe what was the construction and arrangement of the device or parts on such locomotives which permitted any expansion of the boiler or the frame.

A. They had an angle-iron bolted to the boiler and resting upon the frame of the locomotive; that angle-iron had slotted holes to admit of the movement of the boiler upon the frame, caused by the expansion of the boiler.

Q. 11. Were these angle-irons placed at both ends of the boiler or at one end; and, if so, at which?

A. At the rear end only.

Q. 12. Was the front end of the boiler firmly fixed to the frame?

A. At the forward end, yes.

Q. 13. How many such angle-irons were used on each side of the boiler?

A. One.

Q. 14. The part of the angle-iron having the slotted holes was that part bolted to the boiler, or that part resting on the frame?

A. The part resting upon the frame.

Q. 15. Did any bolt pass through such slot; and, if so, to what was such bolt fixed?

A. It did, and was fixed to the frame.

Q. 16. What was the length of such slot, compared with the diameter of the bolt that passed through it?

A. One-half inch longer.

Q. 17. And the width of the slot, was that any greater than the diameter of the bolt?

A. The one-thirty-second of an inch.

Q. 18. Did you ever run either one of such locomotives?

A. I did.

286 Q. 19. Did you ever examine such locomotives when the boiler was heated up to see whether the slotted hole in the angle-iron you have referred to was long enough to allow for all expansion of boiler?

A. Yes.

Q. 20. State whether such slot was long enough for all expansion produced, and whether such hole was just long enough for that purpose, or otherwise?

A. It was about a quarter of an inch longer than the amount necessary for expansion.

Q. 21. State how long such locomotives were used on that road while they had such device for allowing expansion upon them.

A. About ten years.

Q. 22. Was such a device for expansion applied to any other locomotives on that road, to your knowledge?

A. It was, to one other.

Q. 23. How long after those two first-mentioned locomotives were bought and commenced to be used was it that such a device was applied to the other locomotive?

A. About five months.

Q. 24. By whom was the other locomotive referred to built?

A. By the Eastern Railroad Company, at their own shops.

Q. 25. Was that engine in process of building at the time the two were bought from Rogers, Ketchum & Grosvenor?

A. It was.

Q. 26. How long was that engine built by the company used with such device upon it as you have described for allowing expansion of the boiler?

A. About eighteen years.

Q. 27. When those two locomotives, the Binney and Bryant, were received by the Eastern Railroad Company did you have anything to do with taking them from the vessel on which they were brought and transferring them to the Eastern Railroad; and, if so, what?

A. I did, having charge of the men who did the work.

287 Q. 28. Did any person from Rogers, Ketchum & Grosvenor come with those locomotives when they were delivered to the Eastern Railroad; and, if so, who was it, if you know?

A. There did; there came a Mr. Hollingworth.

Cross-examined by Mr. CRAMER:

X Q. 29. Where are the records of the Eastern Railroad Company, and when did you make the examination referred to in your answer to question 7?

A. The records are part in the treasurer's office and part in the machinery department office. The machinery department office is in East

Boston; the treasurer's office is in Boston. I cannot fix the day precisely when I examined those records, but it was within a month past.

X Q. 30. Do these records contain a description of the locomotives of which you have testified, and particularly in regard to the alleged provision for the expansion of the boiler on the frame?

A. The records give a partial description, but not with reference to the part referred to.

X Q. 31. Will you allow the complainants or their counsel to examine such records, or will you produce them before the examiner in order that such examination may be made?

A. I am not in their employ at present, and cannot do so.

(Defendant's counsel states that reference has only been made to those records with reference to the time when the locomotives referred to were purchased and used, and not with reference to the construction of the peculiar device for expansion used on them, and that such records are not, therefore, necessary to be produced; but defendant's counsel further says that he has no reason to doubt but that complainant or his counsel will be permitted to look at them if they desire, and defendant's counsel will endeavor to obtain permission to examine such books, if desired.

Complainants' counsel says that the witness has testified to certain facts which he ascertained by examination of the records of the
288 Eastern Railroad, and therefore thinks that such records should have been produced in order that complainants' counsel might have an opportunity for an inspection of such records to test the accuracy of the witness' statement.)

X Q. 32. You say that the angle-iron was bolted to the boiler, and rested upon the frame of the locomotive. How was it fastened to such frame?

A. It was not fastened to the frame.

X Q. 33. What, then, was the necessity of a slotted hole in the part of the angle-iron resting on the frame?

A. It was to admit of the boiler moving longitudinally.

X Q. 34. Would not the boiler have moved longitudinally if there had been no slotted hole?

A. It would not.

X Q. 35. Why not?

A. Because the bolts passing through it, had it not been slotted, would have held it in a fixed position.

X Q. 36. Then the angle-iron was fastened to the frame with a bolt, was it not?

A. It was not in a manner to prevent its moving longitudinally.

X Q. 37. Was the angle-iron bolted on the frame?

A. It was not.

X Q. 38. Did you use a bolt through the angle-iron connecting it with the frame in any way?

A. I don't understand that question.

X Q. 39. The 15th direct interrogatory is as follows: "Ques. 15. Did any bolt pass through such slot; and, if so, to what was such bolt fixed? Ans. It did, and was fixed to the frame." Please answer the 38th cross-interrogatory having reference to the 15th direct interrogatory and the answer thereto.

A. I don't think the bolt connects the angle-iron to the frame in a manner to prevent its moving.

(Answer objected to as irresponsive.)

X Q. 40. (Last question repeated.)

A. We did use a bolt through the angle-iron connecting it in the frame.

289 X Q. 41. Of what metal was the frame constructed?

A. Of iron.

X Q. 42. How was the bolt fastened in the frame?

A. By being fitted closely.

X Q. 43. Do you mean that it was riveted, or how was it fitted closely?

A. It was not riveted, and it was driven tight.

X Q. 44. So tight that it could not move?

A. Not without using considerable force.

X Q. 45. You say that the length of the slot, compared with the diameter of the bolt, was one-half inch longer. Did you measure it to ascertain that fact?

A. I did not. In my direct testimony I did not intend to give it that way, if it so reads.

X Q. 46. Are those locomotives to which you have testified still in existence, to your knowledge?

A. Parts of them.

X Q. 47. How many locomotives besides the three you have mentioned were in use on the Eastern Railroad in 1849, and for ten years thereafter?

A. I think there were about 30.

X Q. 48. Is the device for expansion to which you have testified in use on the Eastern Railroad now, or was it up to the time you left the road?

A. It is not now.

X Q. 49. When did they change such device?

A. They changed it about ten years after 1849, and when the engines were rebuilt.

X Q. 50. Do you know if any device to provide for expansion of the boiler on the locomotives is now in use on said road; and, if so, what?

A. There are two devices. One is a strap passing over the frame and bolted to the boiler; the other is two angle-irons, one resting on the frame and the other passing by the side of the frame to keep it in place later'lly.

X Q. 51. Do you consider these devices an improvement on that in use from 1849 to 1859, as you have testified, on the three particular engines mentioned by you?

(Objected to as immaterial.)

290 A. I do.

X Q. 52. Was any other device to provide for expansion used on the other engines of the Eastern Railroad from 1849 to 1859?

A. None other than those named. The balance of those engines had one of those other devices. I don't mean all of such other engines, but some of them.

Redirect:

Re-D. Q. 53. The bolt which passed through the slotted holes in the angle-iron, and which were fixed to the frame as you testified; please describe how such bolts were made at their head, and what was the construction at the other end where the nut was.

A. The bolt at the head was made octagon in shape, square under the head to fit the frame close, and without shoulder; at the nut end

they were fitted so that the nut would screw tight to the shoulder, to prevent clamping the bar or angle-iron.

Re-D. Q. 54. Was the head of the bolt or the nut against or near the angle-iron?

A. The nut was against the bar. There was a bar passed over the angle-iron, and was fastened at the two ends to the frame.

Re-D. Q. 55. When the nut on the end of the bolt that passed through the slotted holes in the angle-iron was screwed down tight against the shoulder of the bolt did it interfere or not with the movement of the angle-iron on the frame?

A. It did not.

Re-D. Q. 56. Did not that arrangement of slotted hole in the angle-iron fixed to the boiler and of bolt passing through the slotted hole work or operate satisfactorily to permit the movement of the boiler as it expanded on the frame?

A. It did.

Re-D. Q. 57. In your answers as to the length and breadth of the slots in the angle-irons as compared with the diameter of the bolt passing through such slots, did you mean to be understood as giving the exact length and breadth of such slots, or what?

291 A. I did not. I meant about that mentioned.

JOHN THOMPSON.

Subscribed and sworn to before me this 20th day of April, 1877.

KENNETH G. WHITE
Examiner.

GEORGE HOLLINGSWORTH, called and sworn for defendants, says:

Q. 1. What is your name, age, residence and occupation?

A. My name is George Hollingsworth; I am sixty-nine years old; I reside at Paterson, New Jersey; I am a machinist.

Q. 2. Are you in the employ of the Rogers Locomotive Machine Works of Paterson, N. J.; and, if so, how long have you been with those works?

A. I am, and have been with them thirty-two years next September; I went there in 1845.

Q. 3. What is, more particularly, your business or employment at those works?

A. Traveling engineer; that is, to operate the engines and get them in running order, and run them until they are accepted.

Q. 4. Run the engines, where—at the works or where?

A. On the roads they were designed for.

Q. 5. When an engine is built at those works for any railroad, it is sent to such road, and some one sent with it to operate it until it is accepted; am I correct?

A. Yes, sir.

Q. 6. And you have been one of the persons sent out with engines for such purpose, have you?

A. Yes, sir.

Q. 7. Please mention some of the roads or railroad companies to which you have gone for such purpose, with locomotives built by such works?

292 A. I have been on the Macon & Western New York, Hartford & New Haven, Utica & Syracuse, New York & Providence, Norwich & Worcester, Eastern Railroad of New England, and many others.

Q. 8. Have you had knowledge of the construction of the locomotives built at those works since you have been there?

A. Yes, sir.

Q. 9. On the locomotives built at those works since you have been there, has there been any device for allowing the boiler, when expanded by heat, to move on the frame of the locomotive?

A. Yes, sir.

Q. 10. Describe what that device has been.

A. It has been an angle-iron attached to the leg of the boiler, or the furnace of the boiler, with a strap to cover it, and the angle-iron to have slotted holes in, to allow for expansion, when the bolts is drove into the frame, and nut underneath.

Q. 11. The part of the angle-iron which has the slotted holes in it, on what does that rest?

A. It rests on the frame.

Q. 12. Does any bolt pass through those slotted holes?

A. Yes, sir.

Q. 13. Is that the same bolt which you speak of as "drove into the frame, with a nut underneath?"

A. Yes, sir.

Q. 14. You say this angle-iron, with the slotted holes, is attached to the leg of the boiler, or to the furnace; is the forward end of the boiler fixed firmly to the frame, or not?

A. It is fixed firmly to the frame.

Q. 15. Have you personally examined this arrangement of angle-iron, with slotted holes and bolt passing through such holes, as used at those works?

A. Yes, sir; frequently.

Q. 16. The bolt which passed through such slotted holes, and is drove into the frame as you say, does that move as the boiler expands?

A. No, sir; the bolts don't move.

Q. 17. Does the slotted angle-iron move on such bolt, as the boiler expands?

A. Yes, sir.

293 Q. 18. State, as near as you can, the length of the slotted holes in the angle-iron, as compared with the diameter of the bolt which passes through them.

A. About ½ inch.

Q. 19. How does the width of such slotted holes compare with the diameter of the bolt?

A. It fits longitudinally.

Q. 20. How is the bolt which passes through such slotted holes fastened or held in the frame?

A. They are held permanently by a nut below the frame and the head of the bolt, at the top.

Q. 21. Is such bolt fastened so as in any way to interfere with the movement of the slotted plate on the frame of the machine?

A. No, sir.

Q. 22. Has such device, which you have described, for allowing the expansion of the boiler on the frame, been applied, so far as you know, to all the locomotives built at those works since you have been there, or only to a portion of them?

A. To all, to the best of my knowledge.

Q. 23. Before you went into the employ of those works in 1845, had you seen or used any locomotives built at those works; and, if so, when?

A. Yes; in 1844.

Q. 24. Did such locomotives have on them any device or arrangement for allowing the expansion of the boiler on the frame of the en-

gine; and, if so, was such arrangement the same as you have described, or different?

A. The same as I have described.

Q. 25. How many locomotives did you know of in 1844 that you refer to?

A. But one.

Q. 26. Where was that locomotive used, and did you run it?

A. On the Patterson & Hudson River R. R., and I ran it.

Q. 27. You say you went out with engines from the Rogers Locomotive Works to the Eastern R. R. of New England; how many engines did you take there, and what was the names of such engines, if you know?

294 A. Two—the Binney and Bryant.

Q. 28. To what places were those locomotives taken and where landed?

A. East Boston.

Q. 29. Do you know Mr. John Thompson, who was formerly in the employ of the Eastern R. R.; and, if so, did he assist in the unloading of such engines and getting them on the track of the Eastern R. R.?

A. He did.

Q. 30. Did such engines have on them a device or arrangement of parts for allowing the boiler to expand on the nave, such as you have described?

A. Yes, sir.

Q. 31. How many of such slotted angle-irons and arrangement therewith of bolt, such as you have described, are used, so far as you know, on a locomotive for the purpose mentioned?

A. Sometimes three and sometimes four.

Q. 32. On each side of the boiler, do you mean?

A. Yes.

Q. 33. What did you do just before you went into the employ of the Rogers Locomotive Works?

A. I was running a locomotive on the Patterson and Hudson River Road.

Q. 34. How long was you on that road?

A. Seven years and twenty-seven days.

Q. 35. What kind of a rail did they use on that road, while you was on it?

A. In the first place they used what we called the slab rail, and afterwards the H-rail—our common rail.

Q. 36. By the slab rail, do you mean what is sometimes called "the strap rail"—a flat bar?

A. Yes, sir.

Q. 37. In the use of such rails, as laid on that road, was there any provision, so far as you know, for allowing for the expansion of such rails?

A. There was.

Q. 38. How were such rails laid, and describe the provision for allowing their expension?

(Complainants' counsel objects to any and all evidence by this
295 witness tending to prove any alleged prior knowledge or use of the thing patented, on the ground that the name and residence of the witness, or place of alleged prior use, was not stated in the answer of the defendants.)

A. The end of the rail had an oblong hole and the countersink for the head of the bolt or spike was made to admit the same, with a plate

underneath the joint which had an oblong hole in it, the same as the bar. The spike did not fill up all the hole.

Cross-examined by Mr. CHAMER:

Counsel for complainants declines to cross-examine this witness at the present time, for the reasons set forth in his objection, but reserves his right to do so at some future time, should he deem it necessary.

Counsel does not desire to cross-examine the witness in regard to the locomotives alleged to have been constructed at the Rogers Locomotive Works.

GEORGE HOLLINGSWORTH.

Subscribed and sworn to before me this 20th day of April, 1877.

KENNETH G. WHITE,
Examiner, &c.

Adjourned to April 24th at 11 a. m.

NEW YORK, *April* 24, 1877.

Met pursuant to adjournment.
Present, counsel as before.

WILLIAM S. HUDSON, a witness called on the part of the defendant, being duly sworn, in answer to interrogatories propounded to him by S. D. LAW, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. William S. Hudson; I am 67 years old; I reside at Paterson, New Jersey, and am superintendent and engineer of the Rogers Locomotive and Machine Works of Paterson.

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Q. 2. How long have you been the superintendent of those works?

A. Since the present firm was organized in 1856.

Q. 3. Were you in the employ of those works previous to 1856; and, if so, when did you go into the employ of those works?

A. I was there; I went there in 1852.

Q. 4. What position did you hold from 1852 to 1856 in those works?

A. I was principal assistant to Mr. Rogers; Mr. Rogers had charge of the works, and I was his principal assistant.

Q. 5. On the locomotives which have been built at those works since 1852, has there been any device or arrangement of *facts* for allowing the boiler to expand, and move on the frame of the locomotive?

(Objected to as leading.)

A. There has.

Q. 6. Please describe what is such device or arrangement of parts which has been used on such locomotives for that purpose.

A. There was a plate or plates bent into the shape of an angle-iron, one side of the plate fastened rigidly to the boiler, the other side resting on the frame. The plate had slotted holes through it, and bolts were used passing through the slotted holes as well as through round holes in the frame.

Q. 7. The plate which had the slotted holes through it, was that fastened to the boiler or did that rest on the frame?

A. That rested on the frame.

Q. 8. The bolts that passed through the slotted holes in the plate, were they fastened tightly to the frame or did they move in the frame?

A. They were driven hard into the frame, tight, so as to prevent any movement.

Q. 9. How many of such plates were generally used on a locomotive, and were they placed on each side of the boiler?

297 A. The number used on each locomotive has varied from four to eight, half of them being on each side of the boiler.

Q. 10. How did the slotted holes correspond in size with the bolts that passed through them?

A. In one direction they were a tolerable fit; in the other direction there was room for movement from three-eighths to half an inch.

Q. 11. In which direction, with reference to the length of the locomotive, was the long length of the slotted holes in such place?

A. In the same direction as the length of the locomotives.

Q. 12. Was either end of the boiler permanently fastened to the frame; and, if so, which end?

A. The smoke-box end of the boiler was permanently fastened to the frame.

Q. 13. And where were these slotted plates placed, with respect to either end of the boiler?

A. They were placed on the furnace or back end of the boiler on each side of the furnace.

Q. 14. Was any device or arrangement used with these bolts to prevent them binding the slotted plates; and, if so, what?

A. There was a device used to prevent binding in some cases. It consisted of a thimble, through which the bolt passed, the thimble being sufficiently than the thickness of the plate, so that when the bolt was drawn down tight it would not prevent the plate from moving as required, to accommodate the expansion. Another plan was used, which consisted in an enlargement of the bolt under the head, which was sufficiently greater in length—that is, the length of the enlargement—to prevent a bolt clamping the plate when it was drawn down tight.

Q. 15. Of all the locomotives built at those works since you went there in 1852, what proportion of them had put upon them this device of slotted plate and bolt, which you have described, for permitting expansion of the boiler?

A. I was about to say all of them, but there may be two or
298 three exceptions, and in those cases the construction of the locomotive was such as not to require them.

Q. 16. Are the locomotives built by the Rogers Works numbered consecutively?

A. The record of the locomotives built by them is kept numbered consecutively, and the locomotives now built have a plate upon them containing the number; but that has not been done uniformly till within the last few years; that is, putting the number on the engine.

Q. 17. How many locomotives have been built by that company in all?

A. 2,451.

Q. 18. How many have been built since you went there in 1852?

A. 2,115.

Q. 19. These numbers that you have mentioned in your last two answers, where did you get them?

A. The 2,451 I got from the number on the last engine that was taken apart in the shop; to get the other number, I subtracted 336, the number of engines built prior to the time of my going there.

Q. 20. And did you get the number 336 from examining the records of the company?

A. I did.

Q. 21. What name, if any, is given at the Rogers Locomotive Works to these slotted plates you mentioned, for permitting the expansion of the boiler or the frame?

A. Expansion plates is the name by which they are known through the works.

Q. 22. Have the Rogers Locomotive Works any early, original drawings, which show the construction of such expansion plates?

A. I don't know that they have.

Q. 23. Have you made, or had made under your direction, any drawing showing the construction of such expansion plates; if so, produce it?

A. I had a drawing made, and that is the tracing or copy from it, and I now produce it.

(The tracing produced by witness is put in evidence by de-
300 fendant's counsel, and is marked "Defendant's Exhibit Expansion Plates of Rogers Locomotive Works, K. G. W., Examiner.")

(Here follows diagram marked page 299.)

Q. 24. What is Fig. 1 on such sketch, and what is Fig. 2?

A. Figure 1 is an elevation or side view of a portion of a frame and fire-box of a locomotive, together with the expansion plates. Figure 2 is a view looking downwards on the top of the frame on which the expansion plates rest; it shows the frame and the expansion plates where the slotted holes are.

Q. 24*a*. What do the parts marked A and *a* on such exhibit represent?

A. A represents the main bar of the frame, and *a* represents a tie-bar or brace, forming the lower part of the frame.

Q. 25. And you used these expansion plates both on the main bar of the frame and the base, did you?

A. Yes, sir.

Q. 26. To what are the parts of the expansion plates marked B fixed?

A. To the boiler by studs and nuts, which are not shown on this drawing.

Q. 27. What is the part marked O on such exhibit?

A. O represents a bar or cap piece passing over the expansion plates coming down to the frame at the end, securely bolted to the frame for the purpose of giving lateral support to the frame or frames.

Q. You have spoken of some of the bolts having thimbles, through which the bolt passed; if any such bolts and thimbles are represented in the exhibit, please point them out?

A. The bolts marked 2 pass through thimbles which are represented by short dotted lines.

Q. 28. Does such exhibit show also bolts which do not have the thimble around them, but which are enlarged, as you testified? If so, point them out.

A. The bolts marked Fig. 1 are enlarged under the head, as I have previously described.

Q. 29. You have stated that in one direction the slotted holes
301 in the expansion plates were a tolerable fit for the bolts. When a spindle was used in the bolts, did such spindle pass through the slotted plate?

A. It sometimes did, sometimes not; that is immaterial; it is represented on the exhibit as passing through the cap plate.

Q. 30. Please have the last question read to you again, and state whether you understood it fully in giving your last answer.

A. I did not give a correct answer to that question because the thimbles always pass through the expansion plates or slotted plates.

Q. 31. You have stated that all the locomotives built at those works since 1852, except some few, have been made with the expansion plates such as you have described. Previous to 1852, did you see any of the locomotives built by those works which had on them such expansion plates; and, if so, where and when did you first see any such locomotives having on them such expansion plates?

A. I saw two locomotives on the Syracuse & Utica Railroad in 1844, and I saw one locomotive on the Auburn & Syracuse Railroad in 1845, which had on expansion plates; all three of such locomotives had on expansion plates, and were built by Rogers, Ketchum & Grosvener, as the firm then was, which was the predecessor of the Rogers Locomotive and Machine Works.

Q. 32. Were the expansion plates which were on those locomotives you saw in 1844 and 1845 the same in construction with those illustrated on the Exhibit Expansion Plates of Rogers Locomotive Works, or different?

A. They were the same in construction, the only difference being that there was one plate on the frame and one on the brace, instead of two as represented in the exhibit.

Q. 33. Is the Rogers Locomotive Works and its predecessors one of the oldest established locomotive works; and name any other locomotive works which have been established for about the same length of time as those works?

(Objected to as immaterial and irrelevant.)

302 A. The Rogers Locomotive Works is one of the oldest. Their first locomotive was built in 1837. The Baldwin Locomotive Works, of Philadelphia, were several years earlier in the business.

Cross-examination by Mr. CRAMER:

Q. 34. Who made the sketch from which the tracing, "Defendant's Exhibit Expansion Plates," of Rogers Locomotive Works, was taken?

A. Made by a draughtsman in our office by my directions.

Q. 35. What was his name?

A. Edwin Gould.

Q. 36. From what did you make that sketch?

A. From directions I gave him.

Q. 37. Were those directions verbal or written?

A. They were verbal.

Q. 38. Did you give such directions from your recollection of the construction of locomotives from 1852 to 1856, or from any drawing or memoranda in your possession showing such construction?

A. I gave them from my memory, recollection, and knowledge of what we did.

Q. 39. Are there at the Rogers Locomotive Works any original drawings showing the construction of locomotives from 1852 to 1856?

A. It depends upon what you mean by that. There are drawings showing the principal dimensions and outlines without showing all the details.

Q. 40. Are there any original drawings at the Rogers Locomotive Works showing the so-called expansion plates?

A. At what date?

Q. 41. Any drawing?

A. Oh, yes.

Q. 42. What is the earliest date of such drawings, to your recollection?

A. All the drawings of '52 do show expansion of plates.

303 Q. 43. Why, then, did you say, in response to direct interrog-

story 22, that you did not know that the Rogers Locomotive Works has any such drawings?

A. By "early" I understood prior to 1852.

Q. 44. If, then, you had original drawing of the construction of expansion plates at the Rogers Locomotive Works as early as 1852, why did you not produce such original drawings, or true copies thereof, instead of relying on your memory for making this sketch of which you have testified?

A. Because the drawings are large drawings made on a scale of half size; and while the expansion plates and caps are shown the size of the bolts and slotted holes are not shown on the drawings, but a mere line designating the centre of the bolts.

Q. 45. Will you allow complainants or their counsel to see such drawings and make sketches of them, if they so desire?

A. Certainly.

Q. 46. As I understand you, the bolt which passed through the angle-iron was fastened tightly into the frame, and the metal in the angle-iron was cut away to allow the boiler to move longitudinally on the frame; am I right?

A. Yes.

Q. 47. And the bar or strap marked O was for the purpose of supporting the frame latterally, and had no connection with the expansion of the boiler; am I correct?

A. Yes; that is right.

Q. 48. How long, to your knowledge, have these plates been designated "expansion plates?"

A. I never knew them by any other name; when I knew them in 1844 they were so called.

Redirect by Mr. LAW:

Re-D. Q. 49. The part or side of the expansion plates that had the slotted holes in it rested on the frame and moved longitudinally on the frame, as you have stated, and the bolts that passed through the slots were fastened tightly to the frame and did not move, as you have also stated; the expansion plates moved on the bolts, or along the bolts, as well as on the frame, did they not?

304 A. They did.

W. S. HUDSON.

Subscribed and sworn to before me this 24th day of April, 1877.

KENNETH G. WHITE,
Examiner, &c.

Adjourned to to-morrow, April 25, at 11 a. m.

NEW YORK, *April* 25, 1877.

Met pursuant to adjournment.
Present, counsel as before.

WILLIAM SWINBURNE, a witness called on behalf of the defendant, being duly sworn, in answer to questions propounded to him by S. D LAW, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. William Swinburne; I am 72 years old; I reside at Paterson, New Jersey, and am city comptroller of Paterson, New Jersey.

Q. 2. Were you ever in the employ of the Rogers Locomotive and Machine Works, or its predecessors, in Paterson, New Jersey; and, if so, when did you go there, and what year did you leave such works?

A. I went in their employ in 1835; they commenced building engines in 1836. I was foreman and superintendent of their locomotive works till 1844.

Q. 3. Did you help build or complete the first locomotive that was built by those works in Paterson; and, if so, in what year was that first locomotive completed?

A. I did; completed in 1837.

Q. 4. That first locomotive, was the frame inside or outside of the wheels; and was such frame iron, or what?

A. The frame was outside of the wheels; composed of timber sheathed with iron.

305 Q. 5. In such locomotives, how was the boiler supported from the frame, and what were the lengths of the supports, as near as you can state?

A. The boiler was supported from the frame with iron braces about 2 to 2½ feet long.

Q. 6. In such locomotives built at the Rogers Works in 1837, was there any provision made for permitting the expansion of the boiler on the frame?

A. There was none, and no cause for any.

Q. 7. Did those works build any other locomotives than that one of that construction; and, if so, for how many years did they build locomotives of such construction?

A. They built several engines on the same plan for two years—about two years.

Q. 8. Did those works, at any time while you was there, change the form of construction of their locomotives with reference more particularly to providing for means of allowing the boiler to expand on the frame; and, if so, about when, so near as you can state?

(Objected to as leading.)

A. They changed the wheels to the outside of the frame, or the frame to the inside of the wheels, and used solid iron frames close to the boiler, which required expansion or provision for expansion, but the others did not. This was about 1839 or '40.

Q. 9. Were the first locomotives built by that company, having the iron frames placed on the inside of the wheels, constructed with any provision for expansion of the boiler on the frame?

A. They were not.

Q. 10. State if any complaints or objections were made to that form of engine having the frame inside of the wheels and no provision for expansion of the boiler; and, if so, what; and state under what circumstances the change was made to allow expansion of the boiler on the frame, and what such change was.

(Objected to as leading.)

306 A. Complaint was made on several engines that were first built with iron frames that the strain of the expansion caused the rivets to leak; and at the suggestion of Mr. Rogers he required that the brace on the furnace should be made broad, with a strap over the top of the brace, that strap bolted firmly to the frame, and the brace underneath the strap slotted to admit of an expansion of about ⅜ of an inch.

Q. 11. What was the shape of that brace on the furnace which had the slotted holes in it?

A. It was a plate about 12 to 14 inches long, bent at right angles, one angle bolted or riveted to the furnace and the other angle strapped to the frame.

Q. 12. The part of that brace that had the slotted holes in it—was that riveted to the furnace, or upon what did that part rest?

A. That part with the slotted holes was strapped to the frame.

Q. 13. Did any bolt or bolts pass through those slotted holes; and, if so, to what were such bolts fastened?

A. Bolts did pass through the slotted holes but solid in the frame, and passed through the strap above the brace.

Q. 14. What was the size of those slotted holes as compared with the bolts which passed through them?

A. They were the same size in width of the bolt and $\frac{3}{8}$ of an inch longer than the diameter of the bolt.

Q. 15. These straps you speak of which passed over the slotted plate, were they fastened to the frame by other bolts than those which passed through the slots you have referred to; and, if so, where were such other bolts?

A. The strap over the brace projected three or four inches at each end over the brace, with ears running down to the frame, and bolted solid to the frame at the ends.

Q. 16. Did the bolts that passed through the slots in the brace draw such brace tightly against the frame; or what, if any, device was used with such bolts with reference to their action upon the slotted brace?

A. There were thimbles used, after several experiments, about a quarter of an inch larger than the bolt each way all round, and the slots made to conform to the thimbles instead of to the bolt, and turned
to the exact thickness of the slotted brace, so that the strain of
307 the nut on the bolt would act firmly on the thimbles and admit
of the brace to expand and yet not be loose on the frame.

Q. 17. You say "admit of the brace to expand;" explain a little more fully what you mean by that?

A. The brace being bolted firmly to the furnace would leave an opportunity of moving on the frame to the extent of the slot around the thimble.

Q. 18. How was the length of that slot in the brace determined?

A. The length of the slot was made sufficiently long to admit of any expansion required.

Q. 19. To what part of the boiler were the braces, one part of which was slotted, fixed?

A. To the furnace part of the boiler—the shell of the furnace.

Q. 20. To what was the other end of the boiler fixed; and was it tightly or immovably fixed?

A. There was generally two braces on the cylinder part of the boiler—one at the end of the smoke-box, the other about half way between the smoke-box and furnace; being long and so constructed, they were both firmly riveted to the boiler, and bolted to the frame, having sufficient elasticity to admit it.

Q. 21. The expansion of the boiler—was that backward or towards the furnace, or how.

A. Either way that you could let it go, wherever it was allowed to go.

Q. 22. And these slotted holes in the brace were so made, as I understand you, that the boiler could expand as was necessary; am I correct?

A. Yes. I would just state here that the expansion, the whole of the expansion, was toward the furnace on account of the heavy cylinder being bolted firmly to the smoke-box and frame, which would admit of no expansion in that direction.

(Counsel for complainants objects to the witness volunteering statements which are not responsive to the questions propounded, and which come more properly within the domain of expert testimony and have nothing to do with the facts which the counsel for the defendants is endeavoring to elicit.)

308 Q. 23. During the time you remained at the Rogers Locomotive Works was this device of slotted plate and bolt, which you have mentioned, put upon other locomotives built at those works?

A. Always, afterwards; after that plan was adopted.

Q. 24. When was that plan or device of slotted braces and bolts first used, as near as you can state, at those works?

A. They were first used, as near as I can recollect, about 1840; it might have been '39, but I would not be positive; I am quite confident of '40.

Q. 25. And was it before that time, 1839 or 1840, or after, that locomotives were made by that company having the iron frame on the inside of the wheels, but which had no provision for the expansion of the boiler on the frame?

A. It was about that time, or before that time.

Q. 26. After you left the Rogers Locomotive Works what business did you engage in, and how long did you continue in such business?

A. I left the Rogers Locomotive Works in 1844 and commenced with a new company to build locomotives, and continued in that business for fifteen years afterwards.

Q. 27. Where did you carry on that business and what were the names of the firms or companies in which you were interested for those 15 years?

A. It was in Paterson City, under the title or firm of Swinburne, Smith & Co., and after about six years obtained a charter under the title of the New Jersey Locomotive & Machine Company. I was with Swinburne, Smith & Co. for six years, and one year with the New Jersey Locomotive & Machine Company after we obtained the charter. I then resigned my position as superintendent of the New Jersey Locomotive & Machine Co. and carried on the same business in my own name about eight years, till 1859.

Q. 28. State whether in the locomotives manufactured by Swinburne, Smith & Co., and by the New Jersey Locomotive & Machine Co. while you were its superintendent, and by yourself after you left that

309 company, there was any device used for allowing the expansion of the boiler on the frame; and, if so, whether such device was like that you have previously described as used at the Rogers Locomotive Works, or different therefrom.

A. There was no other device than that I have explained, and that device was always used on all the locomotives built.

Q. 29. State, as near as you can, about how many locomotives, in all, you have built at the Rogers Works and at the other works mentioned, and what proportion of them have had on them such device for expansion which you have described.

A. I have built about 150 locomotives, and on about 140 I used this mode of admitting of expansion described.

Q. 30. This brace which is bolted to the boiler and which has the slotted holes in that part of it resting on the frame, what is it generally called—what name does it generally go by?

A. I generally called it the furnace expansion brace.

Q. 31. Is it sometimes called expansion plate, or expansion pad?

(Objected to as leading.)

A. Well, the expansion plate is part of the expansion brace; the expansion brace implies the whole of the fixture.

(Answer objected to as irresponsive.)

WITNESS. I don't recollect of its being called except the expansion brace.

Cross-examined by Mr. CRAMER:

X Q. 32. Have you had any connection with the Rogers Locomotive Works since you left there in 1844?

A. I have not.

X Q. 33. Have you been testifying from memory in regard to the construction of locomotives at those works?

A. I have.

X Q. 34. Do you recollect the name of the first locomotive on which was placed a device which you call expansion brace?

310 A. I do not.

X Q. 35. Please look at the drawing now shown you, marked "Defendants' Exhibit Expansion Plates of Rogers Locomotive Works, K. G. W., Ex'r," and state whether it correctly represents the device which was placed on the locomotive of which you have testified, which had a device for admitting expansion upon them.

A. This is the device; I never used but one expansion brace on the frame; none on the lower brace of the frame, as represented in this drawing.

X Q. 36. Were all the locomotives constructed at the Rogers Locomotive Works, up to the time you left, made with but one expansion brace on the frame, as you have described?

A. I never used but one expansion brace while I was with Mr. Rogers; they all had but one expansion brace, that is, but one expansion brace on a side; there was one on each frame on each side of the boiler; that [the exhibit] represents two expansion-braces on the frame and two expansion braces on the lower part of the frame.

X Q. 37. As I understand you the bolt which passed through the part of the brace which rested on the frame was fastened tightly in the frame, and the metal in such part of the brace cut away to allow the boiler, when heated, to move longitudinally on the frame; am I right?

A. Yes.

X Q. 38. And the bar or strap which passed over the brace had no connection with the expansion of the boiler; is that so?

A. It had no connection; yes, sir.

WM. SWINBURNE.

Subscribed and sworn to before me this 25th day of April, 1877.

KENNETH G. WHITE,
Examiner, &c.

311 JOHN COOKE, a witness called on behalf of the defendant, being duly sworn, in answer to interrogatories propounded to him by S. D. LAW, esq., deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. John Cooke; I am 52 years old; I reside at Paterson, New Jersey, and am president of the Danforth Locomotive & Machine Company.

Q. 2. Were you ever in the employ of the Rogers Locomotive and Machine Works, of Paterson, New Jersey, or its predecessors, and were you ever superintendent of such works; and, if so, from what time to what time?

A. I was superintendent from 1846 to 1852; I served my apprenticeship there up to that time—up to August, 1845—when I was out of my time.

Q. 3. In the locomotives built at the Rogers Locomotive Works from 1846 to 1852 was there any device or arrangement made use of for allowing the boiler to expand upon the frame; and, if so, what was it?

A. There was a device for that purpose; there was a piece of boiler iron $\frac{5}{8}$ths thick turned up to form an angle-plate, and bolted on each side of the fire-box shell that rested on the frame; on top of that and bolted to the frame was a bar of iron with a piece projecting down the thickness of the angle-plate; then between these projections were two or more bolts passing through the bar and the angle-plate and the frame; these bolts were fitted tight to the frame and bar on top of the angle-plate; around each bolt was a thimble about half an inch larger diameter than the size of the bolt; these thimbles were a shade deeper than the thickness of the angle-plate, so that when the nut on top of the bar of the expansion plates were screwed down tight the expansion brace would slide between the bar and the frame; the holes through the expansion brace in which these thimbles passed were elongated about half an inch, or sufficient to take up all the expansion of the boiler.

Q. 4. Did the bolts around which were the thimbles pass through these elongated holes in the expansion brace?

A. Yes.

312 Q. 5. These bars that passed over the top of the expansion brace and had parts projecting down, how much, if any, longer than the expansion brace were they between the downward-projecting parts?

A. They were from $\frac{3}{8}$ to $\frac{1}{2}$ an inch.

Q. 6. Was this device for allowing expansion of the boiler on the frame put upon all the locomotives made at the Rogers Locomotive Works while you was superintendent, or only on a portion thereof?

A. It was put on all the locomotives.

Q. 7. When you left those works in 1852 what business did you go into, and under what name was it carried on?

A. I went into the locomotive business at Paterson, under the name of Danforth, Cooke & Co. That company lasted until 1865, when we organized a charter company under the name of the Danforth Locomotive & Machine Company. I was superintendent of the locomotive department of that company for one year. I was superintendent of the locomotive department of Danforth, Cooke & Co. during its existence.

Q. 8. On the locomotives made by Danforth, Cooke & Co. while you was superintendent, and by the Danforth Locomotive & Machine Company while you was superintendent, was there any device used for allowing the boiler to expand on the frame; and, if so, was it the same as you have described as used at the Rogers Works, or different?

A. The same device was used as was used at the Rogers Works, and it was used on all the locomotives built.

Q. 9. In such locomotives, including all built under your superintendence, state whether the forward or smoke-stack end of the boiler was fastened firmly to the frame or not.

A. It was fastened firmly to the frame.

Cross-examined by Mr. CRAMER

X Q. 10. While you were at the Rogers Locomotive Works as
313 superintendent did you have any drawings of locomotives showing the device of which you have testified and from which such locomotives were constructed?

A. I think not.

X Q. 11. Did you have any such drawings while you were superintendent of Danforth, Cooke & Co.?

A. I think we had; yes.

X Q. 12. Are those drawings now in existence?

A. I could not tell you.

X Q. 13. When did you last see them?

A. Well, I couldn't tell that.

X Q. 14. Have you been testifying from memory as to the construction of locomotives at the Rogers Locomotive Works?

A. I have.

X Q. 15. Have you seen any of those locomotives since you left those works?

A. I may or may not; I cannot tell positively.

X Q. 16. Please look at the drawing now shown you, marked "Defendant's Exhibit Expansion-Plates of Rogers Locomotive Works, K. G. W., Ex'r," and state whether it does or does not correctly represent the device which you say was used on locomotives while you were superintendent of the Rogers Works.

A. It is about the same thing; usually the expansion plate was made in one piece instead of the two marked B B, but sometimes there were two, the same as marked in the drawing. I don't see any other difference; we did not use the plates on the lower part of the frame as shown in the exhibit.

X Q. 17. The bolts which passed through the part of the angle-iron which rested on the frame were fastened firmly in the frame, and the metal in such part of the angle-iron was cut away around the bolt to allow the boiler when heated to move longitudinally along the frame; do I understand you correctly?

A. Yes, sir.

X Q. 18. And the upper part of the bolt was fastened firmly in the bar or strap; am I correct?

A. Yes, sir.

314 X Q. 19. And the bar or strap was finally fastened to the frame on either end of the angle-iron by bolts passing through it and the frame; is that so?

A. Yes, sir.

Redirect by Mr. LAW:

Re-D. Q. 20. You say you testify as to the construction of the locomotives built at the Rogers Works while you was superintendent there from memory; had you personal knowledge of the construction and arrangement of the expansion plates put on such locomotives, and did you direct as to the construction and arrangement of such plates?

A. I had such personal knowledge, and gave directions as to their construction.

Re-D. Q. 21. Are you confident such expansion plates used on those locomotives were, in their construction, such as you have described?

A. Yes, sir.

Recross by Mr. CRAMER:

Re-C. Q. 22. But you are testifying from your recollection of what oc-

curred while you were superintendent of those works, and not from any recent examination of the locomotives so constructed, are you not?

A. I am.

JOHN COOKE.

Subscribed and sworn to before me this 25th day of April, 1877.

KENNETH G. WHITE,
Examiner, &c.

Adjourned to 2d May, 1877, at 11 o'clock.

NEW YORK, *May 2d*, 1877.

Met pursuant to adjournment.

Present, counsel as before.

HENRY A. LUTTGENS, a witness called on the part of the defendant, being duly sworn, in answer to interrogatories propounded to him by S. D. LAW, deposes and says:

315 Q. 1. What is your name, age, residence, and occupation?

A. My name is Henry A. Luttgens; I am forty-eight years of age; near the city of Paterson, N. J.; I am head draughtsman at the Rogers Locomotive & Machine Works, of Paterson, N. J.

Q. 2. When did you go into the employ of the Rogers Locomotive Machine Works, or its predecessor, and what was the name of the firm when you went there?

A. I went in the employ of the company in the fall of 1852, and the name of the firm then was Rogers, Ketchum & Grosvenor.

Q. 3. How long did you remain with them?

A. They changed the name of the company in 1856 to the Rogers Locomotive & Machine Works; I remained there until 1858; left and returned in 1860; since then, been there all the time.

Q. 4. Was you head draughtsman when you went there in 1852, or who was head draughtsman then, and how long did he remain after you went there?

A. I was not; Mr. Hypolite Uhry was the head draughtsman, and he remained until 1856 or 1857.

Q. 5. Do you know what is called an expansion plate, which has been used on the locomotives made at those works for the purpose of allowing the boiler as it expands to move on the frame?

(Objected to as leading. Question waived.)

Q. 6. On the locomotives built at those works since you have been there, has there been any device or arrangement of parts allowing the boiler as it expands to move upon the frame of the locomotive?

(Same objection.)

A. On all but two, which had vertical boilers, and did not require any such device.

Q. 7. State generally what such device was and how it was arranged.

A. It is a bent plate of iron, bent at right angles, one side of which is
316 securely bolted to the boiler, the other resting on the top of the frame, and held in contact with the frame by a strap, which has sufficient opening in the back end to allow the expansion plate to slide on the top of the frame as the boiler expands; this strap is firmly bolted to the frame beyond the expansion plate; also bolts pass through this strap, expansion plate, and frame; the upper end of the bolt is enlarged so as to rest on a shoulder on the top of the frame, so as to prevent the bolt from binding this strap and expansion plate and frame together, as it is secured to the frame; the holes through the expansion

plate also, through which the enlarged part of the bolt passes, are made oval, so as to allow the expansion plate to move without pressing the side of the bolt; sometimes, instead of the large part of the bolt, the bolt is made of equal diameter throughout, and a thimble put in equal in length to the thickness of the strap and expansion plate.

Q. 9. Have you looked among the drawings in the possession of the Rogers Locomotive Works to see if you can find any made previous to the time when you went there in 1852, on which there is any representation or illustration of any expansion plate such as you have described; if so, produce it?

(Objected to, as calling for the facts not in the personal knowledge of the witness.)

A. I have so looked, and found a drawing having been made about that time, which I produce, and which is marked at the top as follows: "Illinois Central R. R. engine, with outside connection, 13½x22 cylinder."

(The drawing produced by the witness is put in evidence by defendant's counsel, and is marked Exhibit Drawing No. 1, Rogers Works, K. G. W., Ex'r.

It being consented by counsel for parties that a copy of such drawing, so far as relating to expansion plate, may be substituted for the original, the original to be produced on the hearing, if desired.)

Q. 9. Do you find on this drawing any reference as to engines; and, if so, what is that reference?

A. I do; engines Nos. 1, 2, and 3, for the Illinois Central Railroad were built after this drawing.

317 Q. 10. Do the said works have a record of the various engines built by them and the time when such engines were sent out from their works?

A. They have.

Q. 11. Have you examined such records to learn whether any engines called or marked 1, 2, and 3 were made by those works for the Illinois Central Railroad, and when such engines were sent out? If so, state when.

(Objected to, unless records themselves are produced for the examination of complainants' counsel.)

A. I have. Engine No. 1, September 16th, 1852; engine No. 2, September 30th, 1852; and engine No. 3, October 8th, 1852.

Q. 12. Was that drawing you produced made previous to the time when you went to those works, or after, according to the best of your knowledge and belief? And state your reasons for the answer you may give.

A. It was made previous, because the engines left the works at about the time when I entered the employ of the works, so that the drawings were completed at least three months in advance of that time.

Q. 13. Does that drawing produced by you contain any representation or drawing of the expansion plate you have referred to and described in your previous testimony; and, if so, have you made a copy of such portion of that drawing as shows such expansion plates, and will you produce such copy?

A. It shows a representation of the expansion plate, the same as we always represented on our working drawings, and I have had a copy made of such part, which I produce. I had the copy made. I didn't make it myself.

(The copy produced by the witness is put in evidence by def't's coun-

sel, and is marked "Exhibit Copy Expansion Plate from Exhibit Drawing No. 1, Rogers Works, K. G. W., Ex'r.")

(Here follows diagram marked page 318.)

320 Q. 14. Point out on the copy drawing produced by you the expansion plate, the frame of the locomotive, and the strap over the expansion plate.

A. A is the expansion plate; B is the locomotive frame, and C is the strap over the expansion plate.

Q. 15. Point out also on such copy any part of the drawing which indicates that the expansion plate may move on the frame of the machine.

A. On the drawing the parts marked D and E show the room left for expansion.

Q. 16. Whereabouts did the bolts go through the strap which fastens such strap as you have described firmly to the frame?

A. At F and G.

Q. 17. Does such copy drawing or the original from which such copy was taken represent the bolts which you have described which passed through the strap, expansion plate, and frame?

A. It does not.

Q. 18. Have you any drawing made by yourself soon after you went to the Rogers Works or its predecessors which shows such expansion plate; and, if so, have you had a copy of such drawing, so far as it relates to the expansion plate, made therefrom?

A. I have; the original drawing is marked "Illinois Central R. R., 13½x22 in. cylinders, five-feet drivers;" the copy drawing produced by me shows the expansion plate as represented on such original drawing.

(The original drawing produced by the witness is put in evidence by defendant's counsel, and is marked "Defendant's Exhibit Drawing No. 2, Rogers Works, K. G. W., Ex'r.")

(And the copy produced by the witness is also put in evidence by defendants' counsel, and is marked "Exhibit Copy Expansion Plate, from Exhibit Drawing No. 2, Rogers Works, K. G. W., Ex'r.")

(Here follows diagram marked page 319.)

Q. 19. Was the original drawing—Exhibit Drawing No. 2—made by you, and how long after you went to those works in 1852?

A. It was made by me about three or four months after I went to the works in 1852.

321 Q. 20. Is the endorsement or heading on such drawing, "Illinois Central R. R. Road, 13½x22 in. cylinders, 5 ft. drivers," in your handwriting?

A. It is.

Q. 21. Point out on the "Exhibit Copy Expansion Plate from Drawing No. 2" the expansion plate, the frame of the machine, the strap over the expansion plate, the bolts passing through the strap to hold it to the frame, and the bolts passing through the strap, expansion-plate and frame, and what shows the provision for movement of the expansion plate on the frame.

A. A is the expansion plate; B is the frame of the machine; C is the strap; E E are the bolts passing through the strap and frame; D D D D are the bolts passing through the strap, expansion plate, and frame, and F shows the provision made for expansion.

X Q. 37. And also in the strap?

A. I should say they were not equally as tight in the strap as in the frame, but they were intended to fit the strap as well as the frame.

X Q. 38. Are you using the same device to provide for the expansion of the boiler at the Rogers Works now?

A. We are using it the same as shown in the drawing "Defendant's Exhibit Expansion Plate of Rogers Locomotive Works, K. G. W., Ex'r;" this is the present way we are making them on large engines.

Redirect:

Q. 39. The bolts that pass through the strap, expansion plate, and frame do not move as the boiler expands, do they?

A. They do not.

Q. 40. Do you have anything to do with the making of the locomotives at those works?

A. The work is done altogether after my direction, that is, as to the manner in which the work is to be done under the direction of Mr. Hudson.

Q. 41. Any direction to the workmen as to the number of expansion plates desired to be put upon any locomotive, or whether such expansion plates should rest only on the frame or on the frame and the brace below, would come from Mr. Hudson, would it not?

A. It would come from Mr. Hudson.

Q. 42. Please have read to you the last question but one and your answer thereto, and if you wish to add anything further to such answer, do so.

A. The answer to the last question but one refers to the present time, but does not go back to the time the drawings exhibited were worked from.

H. A. LUTTGENS.

Subscribed and sworn to before me this 2d day of May, 1877.

KENNETH G. WHITE,
Examiner, &c.

Adjourned until to-morrow morning at 11 o'clock.

324 PATERSON, *May* 7, 1877.

Met pursuant to adjournment.

Present, counsel as before.

WILLIAM S. HUDSON recalled by Mr. LAW:

Q. 1. In your former examination you stated that you saw in 1844 two locomotives on the Syracuse & Utica Railroad, and in 1845 one locomotive on the Auburn & Syracuse Railroad, which locomotives were built by Rogers, Ketchum & Grosvenor, the predecessors of the Rogers Locomotive Machine Works, and which locomotives had on them expansion plates such as you described in your former examination. State, if you remember, the names of the locomotices you saw on those roads in 1844 and 1845.

A. The names of the locomotives on the Syracuse & Utica Railroad were "Shenandoah" and "Anteanga;" the locomotive on the Auburn & Syracuse Railroad was named "Phœnix."

Q. 2. Do you find in the record called "list of engines," belonging to your works, any record of such engines and dates connected with them? And, if so, please state what you find.

A. I find on the record that the "Shenandoah" was delivered on June 4, 1844, to the Syracuse & Utica Railroad, and the "Anteanga" on July

18. The "Phœnix" was delivered to the Auburn & Syracuse Railroad on June 3, 1845.

Q. 3. The expansion plates you refer to as used on the locomotives made at the Rogers Works since you have been with them; about what is the usual length of the whole plate, and what the breadth of that part moving on the frame, and the breadth of that part bolted on the boiler or furnace?

(Objected to as immaterial.)

A. The plates vary in length; where one plate on the upper part of the frame is used in place of two, they are made from twenty-
325 four to thirty-six inches in length; the part fastened to the boiler usually runs up from ten to twelve inches; the part projecting at right angles and resting on the frame is ordinarily from four to five inches wide, the width of the frame being from three to four inches; where two plates are used instead of one the length varies from eight to sixteen inches.

Q. 4. When did you commence work in connection with railroads or railroading, and where?

A. I commenced on the Utica & Schenectady Railroad in 1836, working for some weeks in the shop and afterward running a locomotive on that road.

Q. 5. What kind of rail was used on that railroad at that time?

A. It was called a strap-rail; my recollection about it is that it was about 2½ inches wide and ¾ inch in thickness.

Q. 6. How were such rails fastened or secured upon the stringers on which they were laid?

A. They were fastened by spikes driven through holes in the rail.

Q. 7. State what was the shape and size of the holes through such rails, compared with the spikes that passed through such holes.

A. The holes were countersunk for the heads of the spikes, the holes being longer than the size of the spikes; latterally the spikes filled the holes tolerably close.

Q. 8. Was the countersinks for the heads of the spikes longer than the head of the spike, or how?

A. They were longer than the head of the spike.

Q. 9. When you use the word "laterally" in your last answer but one, as to the holes in the rails, what do you mean by that word? In what direction as to the rail, lengthwise or crosswise?

A. The word "laterally" was used to designate crosswise of the rail, the longest part of the hole being lengthwise of the rail.

Q. 10. On that road, when using such strap rails, was there any piece of metal which was placed under the ends of two adjoining rails; and, if so, what was that called? And if it extended beyond the
327 spikes in the ends of the rails, what was the shape of the holes in such piece of metal?

A. There were plates used, called splicing-plates, which extended beyond the end hole in each rail; the holes through the splicing-plates being longer than the size of the spikes, I should think from ¼ possibly to ⅜ of an inch; I cannot say very definitely as to the exact amount.

Q. 11. What was the object or purpose of having the holes in the rails and in the splicing-plate, through which the spikes passed, longer than the size of the spike?

A. It was to allow for the expansion and contraction of the rails, so as not to loosen the spikes.

Q. 12. Please look at the sketch drawing now shown you, and state whether or not that represents the form of flat rail and method of fasten-

ing which you have described as used on the Utica & Schenectady roa when you was there in 1836?

A. This represents strap rails fastened to longitudinal timbers an having a splicing-plate at the ends, as used on that road in 1836.

(The drawing shown to witness and referred to in his last answer i put in evidence by defendant's counsel and is marked "Defendant's Ex hibit Utica & Schenectady Flat Rail, 1836, K. G. W., Ex'r.")

(Here follows diagram marked page 326.)

Q. 13. The drawing just shown you shows only a hole in the end of the rail; state whether spikes were driven through the rail between the ends; and, if so, about how far apart, and what was the shape of the holes intermediate between the ends of the rails through which holes the spikes passed?

A. There were holes intermediate between the end holes through which the spikes passed; the holes were of the same shape as the end holes already described, and were from fifteen to eighteen inches apart.

Q. 14. If you have any knowledge of such strap rails being used upon other railroads, and having in them holes longer than the spikes which fastened such rails upon the string pieces, state upon what roads you know of such rails having been used.

328 A. Such rails were used on the Schenectady & Saratoga Railroad, which ran from Schenectady to Saratoga; also on the Rensellaer & Saratoga, which ran at that time from Troy to Balston; also on the Auburn & Syracuse Railroad; the Syracuse & Utica, and on the Tonawanda Railroad, from Rochester to Batavia; with regard to the Auburn & Syracuse, and the Syracuse & Utica, and the Tonawanda Roads, I won't say they were used as early as 1836 on all of those roads, but they were used between 1836 and 1838.

Q. 15. On such roads mentioned in your last answer, was the splicing-plate, such as you have previously described, used?

A. It was generally used, although I have seen parts of the line on the Tonawanda without splicing-plates; I cannot say now whether it was on account of their being short of splicing-plates, or why.

(Counsel for defendant produces for the examination of complainant's counsel the record by which is shown the making for and delivery to the Illinois Central Railroad, in 1852, of the engines Nos. 1, 2, and 3 referred to in the testimony of Henry A. Luttgens, taken in this case May 2d.)

Cross-examination by Mr. CRAMER:

X Q. 16. Did you assist in laying the strap-rail on the various lines of railroad of which you have testified?

A. I did not.

X Q. 17. The spikes were driven tight into the string-pieces, were they not?

A. Yes, sir.

X Q. 18. The shape of the various holes in the rails was rectangular to some extent, was it not?

A. The lower part was; the upper part was an elongated countersink.

X Q. 19. Would the spike move at all?

A. The spike would not move.

Redirect:

Re-D. Q. 20. As the rails expanded and contracted, would they move on the spikes?

329 A. They would and did.

Re-D. Q. 21. You say you did not assist in laying any of these strap rails on such roads; did you frequently see them and know of their construction, as you have described?

A. I did see them and saw trackmen laying them.

Recross:

Re-X Q. 22. How were the spikes driven into position?

A. They were driven by placing the point of the spike in the hole and driving it with a suitable hammer or mall.

Re-X Q. 23. What was the shape of the head of the spike?

A. The head of the spike was in shape as shown on that tracing, being as wide as it was long, countersunk so as to correspond with the crosswise shape of the hole.

W. S. HUDSON.

Subscribed and sworn to before me this 7th day of May, 1877.

KENNETH G. WHITE,
Examiner, &c.

330 U. S. circuit court, eastern district of New York.

ASA JOHNSON AND ANO'R
vs.
THE FLUSHING AND NORTH SIDE RAILroad Company.

Testimony in rebuttal on behalf of the defendants taken before Kenneth G. White, esq., examiner, under and in pursuance of the 67th rule in equity of the Supreme Court of the United States, as amended.

NEW YORK, *September 14th*, 1877.

Present, E. J. Cramer, esq., counsel for complainants; S. Nelson White, esq., for S. D. Law, esq., counsel for defendants.

EDWARD S. RENWICK, called and sworn as a witness for the defendants, says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Edward S. Renwick; I am 54 years of age; I reside at Milburn, New Jersey; my place of business being in the city
331 of New York. I am by profession a civil and mechanical engineer, but for a number of years past have been engaged almost exclusively in acting as expert in the trials of patent causes and in soliciting patents.

2. Q. Are you acquainted with mechanical inventions; and, if so, to what extent? Have you been accustomed to act as an expert in matters relating to patents and inventions, and have you given special attention to the construction and operation of mechanical devices and structures of different kinds, and have you been accustomed to act as an expert witness in patent suits in different circuit courts of the United States; and, if so, for how long? And mention some of the different suits or classes of suits in which you have so testified as an expert witness.

A. I received the education of a civil and mechanical engineer, and was for a number of years engaged practically in the construction of machinery and in the superintendence of machinery in motion, during which period I became acquainted with numerous mechanical inventions. I have been engaged in my present occupation for more than

X Q. 37. And also in the strap?

A. I should say they were not equally as tight in the strap as in the frame, but they were intended to fit the strap as well as the frame.

X Q. 38. Are you using the same device to provide for the expansion of the boiler at the Rogers Works now?

A. We are using it the same as shown in the drawing "Defendant's Exhibit Expansion Plate of Rogers Locomotive Works, K. G. W., Ex'r;" this is the present way we are making them on large engines.

Redirect:

Q. 39. The bolts that pass through the strap, expansion plate, and frame do not move as the boiler expands, do they?

A. They do not.

Q. 40. Do you have anything to do with the making of the locomotives at those works?

A. The work is done altogether after my direction, that is, as to the manner in which the work is to be done under the direction of Mr. Hudson.

Q. 41. Any direction to the workmen as to the number of expansion plates desired to be put upon any locomotive, or whether such expansion plates should rest only on the frame or on the frame and the brace below, would come from Mr. Hudson, would it not?

A. It would come from Mr. Hudson.

Q. 42. Please have read to you the last question but one and your answer thereto, and if you wish to add anything further to such answer, do so.

A. The answer to the last question but one refers to the present time, but does not go back to the time the drawings exhibited were worked from.

H. A. LUTTGENS.

Subscribed and sworn to before me this 2d day of May, 1877.

KENNETH G. WHITE,
Examiner, &c.

Adjourned until to-morrow morning at 11 o'clock.

324 PATERSON, *May* 7, 1877.

Met pursuant to adjournment.

Present, counsel as before.

WILLIAM S. HUDSON recalled by Mr. LAW:

Q. 1. In your former examination you stated that you saw in 1844 two locomotives on the Syracuse & Utica Railroad, and in 1845 one locomotive on the Auburn & Syracuse Railroad, which locomotives were built by Rogers, Ketchum & Grosvenor, the predecessors of the Rogers Locomotive Machine Works, and which locomotives had on them expansion plates such as you described in your former examination. State, if you remember, the names of the locomotices you saw on those roads in 1844 and 1845.

A. The names of the locomotives on the Syracuse & Utica Railroad were "Shenandoah" and "Anteanga;" the locomotive on the Auburn & Syracuse Railroad was named "Phœnix."

Q. 2. Do you find in the record called "list of engines," belonging to your works, any record of such engines and dates connected with them? And, if so, please state what you find.

A. I find on the record that the "Shenandoah" was delivered on June 4, 1844, to the Syracuse & Utica Railroad, and the "Anteanga" on July

18. The "Phœnix" was delivered to the Auburn & Syracuse Railroad on June 3, 1845.

Q. 3. The expansion plates you refer to as used on the locomotives made at the Rogers Works since you have been with them; about what is the usual length of the whole plate, and what the breadth of that part moving on the frame, and the breadth of that part bolted on the boiler or furnace?

(Objected to as immaterial.)

A. The plates vary in length; where one plate on the upper part of the frame is used in place of two, they are made from twenty-
325 four to thirty-six inches in length; the part fastened to the boiler usually runs up from ten to twelve inches; the part projecting at right angles and resting on the frame is ordinarily from four to five inches wide, the width of the frame being from three to four inches; where two plates are used instead of one the length varies from eight to sixteen inches.

Q. 4. When did you commence work in connection with railroads or railroading, and where?

A. I commenced on the Utica & Schenectady Railroad in 1836, working for some weeks in the shop and afterward running a locomotive on that road.

Q. 5. What kind of rail was used on that railroad at that time?

A. It was called a strap-rail; my recollection about it is that it was about 2½ inches wide and ¾ inch in thickness.

Q. 6. How were such rails fastened or secured upon the stringers on which they were laid?

A. They were fastened by spikes driven through holes in the rail.

Q. 7. State what was the shape and size of the holes through such rails, compared with the spikes that passed through such holes.

A. The holes were countersunk for the heads of the spikes, the holes being longer than the size of the spikes; latterally the spikes filled the holes tolerably close.

Q. 8. Was the countersinks for the heads of the spikes longer than the head of the spike, or how?

A. They were longer than the head of the spike.

Q. 9. When you use the word "laterally" in your last answer but one, as to the holes in the rails, what do you mean by that word? In what direction as to the rail, lengthwise or crosswise?

A. The word "laterally" was used to designate crosswise of the rail, the longest part of the hole being lengthwise of the rail.

Q. 10. On that road, when using such strap rails, was there any piece of metal which was placed under the ends of two adjoining rails; and,
if so, what was that called? And if it extended beyond the
327 spikes in the ends of the rails, what was the shape of the holes in such piece of metal?

A. There were plates used, called splicing-plates, which extended beyond the end hole in each rail; the holes through the splicing-plates being longer than the size of the spikes, I should think from ¼ possibly to ⅜ of an inch; I cannot say very definitely as to the exact amount.

Q. 11. What was the object or purpose of having the holes in the rails and in the splicing-plate, through which the spikes passed, longer than the size of the spike?

A. It was to allow for the expansion and contraction of the rails, so as not to loosen the spikes.

Q. 12. Please look at the sketch drawing now shown you, and state whether or not that represents the form of flat rail and method of fasten-

ing which you have described as used on the Utica & Schenectady road when you was there in 1836?

A. This represents strap rails fastened to longitudinal timbers and having a splicing-plate at the ends, as used on that road in 1836.

(The drawing shown to witness and referred to in his last answer is put in evidence by defendant's counsel and is marked "Defendant's Exhibit Utica & Schenectady Flat Rail, 1836, K. G. W., Ex'r.")

(Here follows diagram marked page 326.)

Q. 13. The drawing just shown you shows only a hole in the end of the rail; state whether spikes were driven through the rail between the ends; and, if so, about how far apart, and what was the shape of the holes intermediate between the ends of the rails through which holes the spikes passed?

A. There were holes intermediate between the end holes through which the spikes passed; the holes were of the same shape as the end holes already described, and were from fifteen to eighteen inches apart.

Q. 14. If you have any knowledge of such strap rails being used upon other railroads, and having in them holes longer than the spikes which fastened such rails upon the string pieces, state upon what roads you know of such rails having been used.

328 A. Such rails were used on the Schenectady & Saratoga Railroad, which ran from Schenectady to Saratoga; also on the Rensellaer & Saratoga, which ran at that time from Troy to Balston; also on the Auburn & Syracuse Railroad; the Syracuse & Utica, and on the Tonawanda Railroad, from Rochester to Batavia; with regard to the Auburn & Syracuse, and the Syracuse & Utica, and the Tonawanda Roads, I won't say they were used as early as 1836 on all of those roads, but they were used between 1836 and 1838.

Q. 15. On such roads mentioned in your last answer, was the splicing-plate, such as you have previously described, used?

A. It was generally used, although I have seen parts of the line on the Tonawanda without splicing-plates; I cannot say now whether it was on account of their being short of splicing-plates, or why.

(Counsel for defendant produces for the examination of complainant's counsel the record by which is shown the making for and delivery to the Illinois Central Railroad, in 1852, of the engines Nos. 1, 2, and 3 referred to in the testimony of Henry A. Luttgens, taken in this case May 2d.)

Cross-examination by Mr. CRAMER:

X Q. 16. Did you assist in laying the strap-rail on the various lines of railroad of which you have testified?

A. I did not.

X Q. 17. The spikes were driven tight into the string-pieces, were they not?

A. Yes, sir.

X Q. 18. The shape of the various holes in the rails was rectangular to some extent, was it not?

A. The lower part was; the upper part was an elongated countersink.

X Q. 19. Would the spike move at all?

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Redirect:

Re-D. Q. 20. As the rails expanded and contracted, would they move on the spikes?

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Re-D. Q. 21. You say you did not assist in laying any of these strap rails on such roads; did you frequently see them and know of their construction, as you have described?

A. I did see them and saw trackmen laying them.

Recross:

Re-X Q. 22. How were the spikes driven into position?

A. They were driven by placing the point of the spike in the hole and driving it with a suitable hammer or mall.

Re-X Q. 23. What was the shape of the head of the spike?

A. The head of the spike was in shape as shown on that tracing, being as wide as it was long, countersunk so as to correspond with the crosswise shape of the hole.

W. S. HUDSON.

Subscribed and sworn to before me this 7th day of May, 1877.

KENNETH G. WHITE,
Examiner, &c.

330 U. S. circuit court, eastern district of New York.

ASA JOHNSON AND ANO'R
vs.
THE FLUSHING AND NORTH SIDE RAILroad Company.

Testimony in rebuttal on behalf of the defendants taken before Kenneth G. White, esq., examiner, under and in pursuance of the 67th rule in equity of the Supreme Court of the United States, as amended.

NEW YORK, *September 14th*, 1877.

Present, E. J. Cramer, esq., counsel for complainants; S. Nelson White, esq., for S. D. Law, esq., counsel for defendants.

EDWARD S. RENWICK, called and sworn as a witness for the defendants, says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Edward S. Renwick; I am 54 years of age; I reside at Milburn, New Jersey; my place of business being in the city
331 of New York. I am by profession a civil and mechanical engineer, but for a number of years past have been engaged almost exclusively in acting as expert in the trials of patent causes and in soliciting patents.

2. Q. Are you acquainted with mechanical inventions; and, if so, to what extent? Have you been accustomed to act as an expert in matters relating to patents and inventions, and have you given special attention to the construction and operation of mechanical devices and structures of different kinds, and have you been accustomed to act as an expert witness in patent suits in different circuit courts of the United States; and, if so, for how long? And mention some of the different suits or classes of suits in which you have so testified as an expert witness.

A. I received the education of a civil and mechanical engineer, and was for a number of years engaged practically in the construction of machinery and in the superintendence of machinery in motion, during which period I became acquainted with numerous mechanical inventions. I have been engaged in my present occupation for more than

28 years. During this period, I have had to examine and make myself acquainted with the construction of an immense number of mechanical inventions described in books and patents, both American and foreign, which I have had to examine in order to ascertain whether inventions described in American patents were new or old. I have had to give special attention to the construction and operation of mechanical devices and structures of many different kinds, not only by having had to examine them, but by having frequently had to superintend their operation, to operate them myself, and to adjust them for practical use. I have also had to plan machinery of different kinds, and am frequently called upon to examine plans of machinery and to give opinions as to whether the construction should be varied or not. I have been accustomed to act as expert witness in patent suits for about 27 years in different circuit courts of the United States. Some of the classes
332 of suits in which I have been called upon to testify as an expert are those of planing-machines, grain grinding-machines, smut-machines, bran-dusters, railroad-cars, steam-engines, sewing-machines, looms for weaving carpets, and for other purposes, knitting-machines, water-wheels, manufactures of India rubber and of other materials, reaping and mowing machines, seed-sowing machines, cultivators and the manufacture of glass articles. In fact, for many years past there has been hardly a week for nine or ten months in each year that I have not been called upon to act as expert in a patent suit.

3. Q. Have you had any practical experience in the construction, or management, or superintendence of machinery or manufacturing works; and, if so, to what extent, and what kinds of machinery, and where?

A. I have had a good deal of experience in the superintendence and construction of machinery. For nearly ten years of my life I was employed almost exclusively in the construction and repair of machinery, principally that connected with the manufacture of iron, such as machinery for rolling iron, pumping-machinery, steam-engines, water-wheels and machinery connected with blast-furnaces; also nail machinery. For three years I carried on a small machine-shop myself, where machinery for the manufacture of pistols was made. I have had to plan machines of a number of different kinds, and to superintend their construction; such machines being those described in patents and printed descriptions.

4. Q. Have you examined the letters patent, reissue No. 4870, for "improvement in fastening metals to roofs," and being Complainant's Exhibit No. 1; and do you understand the construction and operation of the invention or device therein described and claimed?

A. I have examined and believe I understand the contents of
333 a certified Patent Office copy of letters patent, reissue No. 4870, referred to in the question. I believe that I understand the construction and operation of the mechanical devices described in the descriptive portion of the specification, and represented in the drawings of the patent. I also believe that I understand the construction and operation of the self-adjusting fastener recited in the first claim of the said reissue, and also the construction and operation of the several devices which are recited in the second claim; but I am not certain that I understand the precise scope of the combination recited in the second claim, because the language of the said claim, taken in connection with the preceding description, is such as to make the scope of the combination broad or narrow according to the construction which is put upon the language.

Adjourned to the 18th inst., at 10½ a. m.

NEW YORK, *Sept.* 18, 1877.

Met pursuant to adjournment.

Present, E. J. Cramer, esq., for complainants; S. D. Law, esq., for defendants.

Direct examination of Edward S. Renwick resumed:

5. Q. From your examination of such patent, what do you understand to be the self-adjusting fastener described therein, and what do you understand to be the mechanical structure and the operation thereof recited in the first claim of said patent, taken in connection with the description found therein and the drawings attached thereto?

A. In endeavoring to ascertain what was the particular thing intended in the patent by the words "self-adjusting fastener," I was met with considerable difficulty, arising from the fact that I was unable to
334 find in the descriptive part of the patent, contained between the second paragraph which enumerates the drawings and the paragraphs of claims, any distinct statement of what the self-adjusting fastener consisted. By comparing together several parts of the specification, I was led to the conclusion that the self-adjusting fastener recited in the first claim consisted of the shoe or bottom plate 5, the side-plates or flanges 4, 4, which are in one piece with the said bottom plate, and the bolt which is passed through holes in the said flanges of larger size than the said bolt. The two parts of the specification which appear to throw most light on this subject are, first, the statement in the second paragraph in relation to Fig. 3, and, second, the description in the fifth paragraph in which there is a description of the manner in which the fastening is to be connected with the roof, namely, by the "stud fastened to the same," hence the said stud must be the device referred to in the statement relative to Fig. 3; and if the said stud 2 should be removed from Fig. 3, there would be left the bottom plate with its flanges and the bolt. The operation of this device is that the bottom plate with its flanges is secured to one of the articles which is to be fastened together, while the bolt is connected through the intervention of a stud or its equivalent with the other article to be fastened, and movement of the one article relativeiy to the other is permitted by the fact that the holes of the flanges are larger than the bolt, or, in other words, that the bolt is smaller than the holes. In my opinion the same principle of a capacity of movement would be attained if the hole in that one of the articles through which the bolt passed was larger than the bolt, while the holes in the flanges fitted the bolt, as is attained when the holes of the flanges are larger than the bolt, because in both cases movement would be permitted by reason of the hole being larger than the bolt. There would also, in my opinion, be no difference in principle between the device
335 constructed with two flanges to the bottom plate or shoe, and a device constructed with a single flange to such bottom plate or shoe; because in both cases if the bolt-holes were equally larger than the bolt, the same amount of movement would be permitted. Moreover, I find the following statement in the patent: "I contemplate using my invention as a general fastener where it is necessary to allow for the contraction and expansion of the material used, not confining myself to buildings only. Now, cases may frequently arise in practice in which it would be inconvenient to use a flange on more than one side of an article to be fastened, and as the invention, according to the paragraph thus quoted, is broad enough in its scope to cover such cases, a self-adjusting fastener made with a single flange appears to me to be within the scope of the invention. There is another reason which is pertinent to this subject, namely, that no advantage is set forth in the

patent as arising from the use of two flanges over the use of one. If two flanges should be put in close contact with an article and at its opposite sides, they would undoubtedly tend to confine it more than a single flange would, but confining action is not made any part or feature of the self-adjusting fastener described in the patent; on the contrary, as appears by the representation at "Figure 3," and from the description in the first part of the paragraph, commencing near the end of page 183 of complainant's printed record, the flanges may not only be set at a distance from each side of the thing between them, but the latter may be permitted to move freely between the flanges, so that no confining action is a part of the mode of operation of the self-adjusting fastener, which is the subject matter of the first claim. And consequently the use of two flanges to produce confinement does not appear to me to be an essential feature of the invention. As I understand the patent, the articles to be fastened, such as the metallic roofing and the wooden sheathing, do not constitute any part of the invention recited in the first claim.

336 6. Q. What do you understand to be the structure and its operation recited in the second claim of said patent, taken in connection with the description found therein and the drawings attached thereto?

A. I understand the structure recited in the second claim of the patent to be a combination of devices or members; but the nature of those devices, and the number of them, depends upon the construction given to the language, which may be broad or narrow. Thus the combination recited in the claim, when taken in connection with the various statements in the patent, and particularly with the one commencing (in folio 542 of complainant's record) with the words "I contemplate," may be a combination of the adjusting bolt or its equivalent, the slotted side-plates or their equivalent, the two articles or materials to be connected together, and every means of suitably connecting the adjusting bolt and slotted side-plates or their equivalents with the materials or articles to be fastened together, whether directly or indirectly. In a combination of this description it would be entirely immaterial for the purpose of permitting movement whether the bolt-hole in one of the articles or materials fitted the bolt and the holes in the side-plates were larger than the bolt; or whether the bolt-hole in one of the articles or materials was larger than the bolt while the bolt-holes in the side-plates fitted the bolts; because, in both cases, the mode of operation would be precisely the same, and the movement would be permitted by reason of the bolt-hole being larger than the bolt. It would also in many cases be expedient to have the latter modification rather than the former; and such cases, as I understand the statement contained in the said paragraph at folio 542 of complainants' record, are specially included within the scope of the invention. It would also, in my opinion, be immaterial, if the said construction be the true one, whether one slotted side-plate or two slotted side-plates be employed in the
337 combination; or whether a slotted side-plate at one side of an article and a washer or perforated plate not connected with the said one side-plate, except through the intervention of the bolt, be employed in place of the two side-plates connected together; because in all these cases movement would be permitted by the fact that the bolt-holes were larger than the bolt, and the various members of the combination would perform the same functions in the same way; and because, as above stated by me, when speaking of the subject-matter of the first claim, the invention, whether it be the subject-matter of the

first claim or the subject-matter of the second, is not restricted to any confining action of the flanges or side-pates. Hence the two modifications I have mentioned would be equivalents in the combination for two side-plates connected rigidly with each other.

The combination of the said second claim may also be construed to consist of the following devices, namely: The adjusting bolt, or its equivalent; the slotted side-plates, or their equivalent; the two articles or materials to be fastened together; and suitable means, substantially such as are described or specified, by which the adjusting bolt and slotted side-plates are suitably connected to and combined with the said materials or articles. The means described in the patent for making such connection and combination are the "stud 2" (by which the adjusting bolt is connected with one of the articles) and the "bottom plate," or "shoe 5," by which the side-plates are connected with the other article; and these two means, or their substantial equivalents, must in such case form part of the combination recited in said second claim. This view of the said combination appears to me to be the true one, in view of the fact that there is no description or suggestion in any part of the patent of any connection of the adjusting bolt with one of the articles by any other means than the stud, and there is no description or suggestion of any connection of the side-plates or flanges
338 with the other article or material by any other means than the bottom plate made in one piece with the said flanges or side-plates. Moreover, this view would not be inconsistent with the broad statement in the paragraph in folio 542, complainant's record; if the said paragraph was understood to refer to all cases in which the articles or materials could be fastened together by means of the stud, the bolt, and the bottom plate with its flanges; instead of being construed so broadly as to apply to every case where materials or articles were to be fastened with the capacity of movement by expansion or contraction.

The operation of the combination, if it be the one first mentioned, would be to permit one article to move or be moved relatively to the other (no matter by what force) by reason of the fact that the bolt-holes were larger than the bolt. The force which produces the movement is, in my opinion, immaterial, because the force is not part of the mechanical structure; and because if the parts can be moved by the expansive or contractile force due to heat, they can be moved by any other force of the same power. If the combination be the second one referred to by me, then the operation of it is to permit two articles which are parallel with each other, but not in the same straight line, to move relatively to each other when subjected to expansion or contraction, or other sufficient force; the said parts, although parallel with each other, being connected by the stud protruding from one crosswise of its line of movement, the bottom plate and its flanges protruding from the other in like manner, and the bolt working in holes or slots larger than its cross-section.

7. Q. Assuming the first construction given by you of what is the structure embraced in the second claim of the complainant's patent to be the correct one, state the difference between such structure and that embraced in the first claim, as you have construed it.

339 A. The differences are these: The structure embraced by the second claim under the first construction mentioned by me differs from that embraced by the first claim in the following respects: First, the structure of the second claim does not require the bottom plate 5, which is an essential feature of the structure of the first claim; second,

the structure embraced by the second claim requires, as essential members of it, the two articles or materials to be fastened together, which two articles are not required as members of the structure of the first claim.

8. Q. Have you examined the ends of the two rails marked "Deft's' Exhibit New Castle and Frenchtown Rail; S. Bell, examiner, Philad'a, Pa., Oct. 12, 1876;" and in connection therewith, have you read the paper marked "Defendant Exhibit Agreement of October 10, 1835, for T-rails for New Castle and Frenchtown Railroad; K. G. W., ex'r;" a copy of which last exhibit is found on pages 73 and 74 of defendant's record?

A. I have examined the two ends of the rails marked as stated in the question; I have also examined the paper marked "Defendant's Exhibit," &c., referred to in the question.

9. Q. Do you understand the purport or meaning of said exhibit, "Agreement of October 10, 1835," &c., and particularly of that part thereof entitled "specification" (a copy of which is on page 74 of defendant's record), and what are the uses of the several parts or pieces mentioned in such "specification;" and, if so, state what are the uses of the several parts mentioned in such specification, and how they are to be used as indicated in such specification in laying rails mentioned therein, for forming a railroad track.

A. I believe that I understand the purport or meaning of the said exhibit so far as it relates to the number of parts mentioned and their uses; but I should not be able to know the precise shapes of some of the parts mentioned without having seen them or some repre-
340 sentations of them similar to the copper, wooden, and iron patterns referred to in the specification. The rails mentioned in the specification are rails for a railroad. The plate for rails to rest on is undoubtedly a plate to be put beneath the rails, at the joint where two rails come together. The washer to each rail is undoubtedly a perforated piece of metal to be put over the bolt with a square head (subsequently mentioned), so as to intervene between the rivet head which is made upon it and the side of the rail, as appears from that part of the specification which says that the bolt is "to pass through the oblong hole" (of the rail) "and washer;" and thus indicates that the point of the bolt is to pass through the hole of the washer after being passed through the oblong hole of the rail. The connecting plate mentioned is a plate by means of which the adjacent ends of two rails are to be connected; one end of said connecting plate being riveted to one end of the rail, and the other end of the said connecting plate projecting beyond the end of the rail in a position to be connected with the end of the next rail, which has an oblong hole in it. The bolt with square head mentioned is a bolt having a round stem and a square head of sufficient length to be passed through the connecting plate, the oblong hole, and the washer, and allow of being riveted when the rails are laid down; the riveting being of course done by upsetting or driving up the point of the bolt after it is in place, so as to spread it laterally over the washer, and thus prevent the withdrawal of the bolt. The nails mentioned are what would now be commonly called railroad spikes, and are for the purpose of holding the rail down to the wooden base or foundation upon which it would be placed. The making of one of the holes in the rail oblong was to permit the rail to work slightly upon the bolt; it having been a common practice, so far as I know from information and from an examination of rails used in this country, to make the holes for fastening in rails oblong, so as to permit the

341 iron to expand or contract relatively to the wooden foundation to which it was fastened.

10. Q. In connecting together the ends of rails made as described in such "specification" and using a washer in the manner indicated in such specification, and using and riveting the bolt, as also provided in such specification, would there, in your opinion, founded on your knowledge and experience as a mechanical engineer and one familiar with mechanical structures, be any practical difficulty in riveting such bolt so as to hold the ends of the rails together, and at the same time permit the movement on such bolt of the rails, which would be rendered necessary for the contraction and expansion of such rails?

A. There would be no practical difficulty in riveting the bolt so as to hold the rails together with the aid of the connecting plate with the requisite firmness, and at the same time to permit whatever movement there might be by reason of expansion and contration, for the following reasons: In the first place the amount of movement to be provided for would be small, much within the capacity permitted by the oblong hole if the latter were made as represented in "Defendant's Exhibit New Castle and Frenchtown Rail." In the second place, the resistance to the movement of the rail by contraction and expansion would be the friction between the sides of the rail, the side of the connecting plate at one side of the rail, and the side of the washer at the other side of the rail; while the force producing the movement would be equal to that required to stretch or compress the rail longitudinally to the same extent as the expansion or contraction would lengthen or shorten it. This force would be enormous, and I gravely doubt whether it would be possible to compress the washer and connecting plate against the side of the rail by the use of a single riveted bolt with sufficient power to overcome the action of such a force, even if the point of the bolt should be riveted up as solidly as it would be possible with
342 the purpose in view of preventing movement. On the other hand, if the bolt point should be riveted up without the purpose of endeavoring to prevent movement if possible, the presumption is that the longtitudinal movement by expansion and contraction would be comparatively easy. In the third place, it is a common practice among blacksmiths and machinists to connect two parts by a rivet, the point of which is headed up while red hot, and yet permit the movement of the parts relatively to each other. A common instance of this is a blacksmith's tongs, the two parts of which are connected by a rivet put in and riveted up while red hot. In a case of this kind the blacksmith tries whether the two parts will move upon each other after riveting, which they will frequently do at once, from the fact that the riveted end has not been driven up too tightly. If he finds that the parts will not move, it is a common practice to strike the riveted end one or more blows with a hammer while the rivet head is unsupported, the article at this time being supported by the anvil, while the rivet head either projects over the edge of the anvil or into the hole of the anvil. The effect of the blows under such conditions is to slightly lengthen the stem of the rivet, and thus leave the parts connected by it free to move. Hence when putting together the rails by the use of a riveted bolt, unless the bolt had been riveted up with exceeding tightness, the joint would not be so firm as to prevent movement by expansion, and after the riveting was done; but if the riveting had been done even very tightly, a single blow struck upon the riveted end after the support was removed from the head of the bolt would have been amply sufficient to have allowed the required movement.

11 Q. In connecting together the ends of rails made as described in the last question by a riveted bolt, as indicated in such "specification," if the washer referred to in the last question was not used at all,
343 would there, in your opinion, under such circumstances, be any practical difficulty in riveting such bolt so as to hold the rails together, and also permit their movement, rendered necessary by their expansion or contraction?

A. There would not; in such circumstances the natural way of applying the bolt would be to enter its point, first, through the oblong hole in the rail, then through the round hole in the connecting plate, and to rivet up the point against the outer side of the connecting plate. in such case I doubt if it would be possible to rivet up the bolt so firmly as to prevent the movement of the rail between the connecting plate on one side, and the square head of the bolt on the other, by the act of expansion and contraction. But even if it should be possible to produce this effect by specially careful riveting, having that purpose in view, the ordinary way in which a bolt-head would be riveted under the circumstances would not make it clasp the rail with sufficient closeness to prevent movement; while, if the riveting had been done even with extraordinary care, a single blow struck upon the riveted end of the bolt after the support was withdrawn from its head would be sufficient to insure the requisite capacity of movement. On the other hand, if the bolt should have been inserted point foremost through the connecting plate and then through the oblong hole, and should have been riveted up against the rail without first applying the washer to the bolt point, the oblong hole is so much larger than the hole in the connecting plate, and consequently so much larger than the stem of the bolt, that it would have required extraordinary care to rivet up the end of the bolt so thoroughly as to make it fill the oblong hole; and unless such extraordinary care was exerted, so that said hole was filled up solidly, movement by expansion and contraction would be permitted. It is not in my opinion probable that in practice such extraordinary care would have been exerted, and the presumption is that if any special
344 care had been exerted, it would be to avoid riveting up the end of the bolt sufficiently to fill up the oblong hole, because it was a matter of common knowledge that the holes for fastenings in rails should be and were made oblong so as to permit movement by expansion and contraction.

12. Q. How do the two rail-ends marked "Defendant's Exhibit New Castle and Frenchtown Rail" correspond with the rails required by the "specification" before referred to (a copy of which is on page 74 of defendant's record), and state from an examination of such rail-ends whether there is anything upon them which indicates whether anything like a washer was ever used in connection with that one of such rail-ends which has the oblong holes, when such rail-end was laid as a part of the track?

A. The rail-ends, "Defendant's Exhibit New Castle and Frenchtown Rail," correspond with the rails required by such "specification" in the respect that they have a connecting plate riveted on one end of the rail, and the other end of the rail has an oblong hole in it. From the dimensions of the rails I should think that when new they must have been of about the weight mentioned in the specification. I am unable to say whether the said rails, "Defendant's Exhibit New Castle and Frenchtown Rail," and the connecting plate have or have not the precise forms of those mentioned in the specification, because those forms were indicated by patterns which are referred to in the specification,

but are not now before me. One of the rail-ends of the said defendant's exhibit, namely, that having the oblong hole in it, has the appearance of having had a square washer applied to it at the side opposite that which would be in contact with the connecting plate. The indication to which I refer is a portion of the web of the rail surrounding the oblong hole, which is less eroded by rust than the residue, so that its ends are approximately square. Such an appearance would
345 be produced by the protection afforded from the covering of the said portion by a square washer, just as a similar effect or indication appears on the other rail-end at the place where it is covered by the end of the connecting plate.

13 Q. Do you find in the description contained in such specification, part of Defendant's Exhibit Agreement of October 10, 1835, &c., when the rails are put together in accordance with such specification, and do you find in the rail-ends, "Defendant's Exhibit New Castle and Frenchtown Rail," when such rails were connected together in the manner described by defendant's witnesses, any device or structure similar to and operating substantially in the manner described in Complainant's Patent, Reissue 4870, as you understand said patent, and the structure described and claimed therein?

A. Assuming that the parts mentioned in said "specification" of rails and appurtenances (which I will hereafter call the New Castle specification) were put together as exemplified by Defendant's Exhibit New Castle and Frenchtown Rail, as far as it exhibits the mode in which the parts were put together, and as testified to by defendant's witnesses on this subject, and either with or without a washer between the riveted end of the bolt and the side of the rail, the structure produced did not, in my opinion, embody the improvement recited in the first claim of Complainant's Patent, Reissue 4870, for the reason that the structure produced lacked one essential part of the self-adjusting fastener required by said first claim, namely, the bottom plate 5, with which the side flange or flanges are connected, and through which the side flange or flanges can be connected with one of the articles to be fastened together. As respects the structure recited in the second claim of the said reissue, the said parts referred to in the said New Castle specification, when put together, would correspond substantially with the structure recited in the said second claim, if the true construc-
346 tion of that claim be the one first stated by me in my answer to question 6. In such case the bolt of the New Castle specification would correspond substantially with the bolt of the said claim; if the washer of said New Castle specification were applied as I have stated, the connecting plate at one side of the rail, and the washer at the other, would be the equivalents of the two side-plates referred to in the said claim; the oblong hole of the rail would be the equivalent of the slots or oblong holes of the said two side-plates (because it is immaterial for the purpose of permitting the movement of the bolt whether the oblong hole be in the article or in the side-plates); the two ends of the rails of the said New Castle specification, which would be connected, would correspond substantially with the two articles or materials referred to in the said claim as being connected; and the structure as a whole would have the mode of operation of the structure which, under the first construction which I have assumed in said question 6, would then be within the scope of the combination. The same conclusion would, in my opinion, be correct if the parts mentioned in the said New Castle specification had been put together without the washer, because, inasmuch as the one connecting plate would have con-

nected the two ends of the rails, and the oblong hole for the bolt would have permitted movement by contraction or expansion, the mode of operation of the structure produced, so far as it was affected by expansion and contraction, would have been the same, although the connection would not have been as strong laterally. Lateral strength, however, as I have previously stated, is not required to be attained by the improvements recited in the patent, and is therefore not, in my opinion, to be considered when comparing other structures with those recited in the claim. It is true that in the case of the parts mentioned in the New Castle specification the equivalent bolt and the equivalent of the side-plates of the said second claim would not be combined with the two materials (that is, the rails) by means of anything corresponding with the stud 2, and the bottom plate 5, described in the reissue No. 4870, but would be connected to and combined with such materials or rails directly, without the intervention of any instrumentality or device between the bolt and the one material (or rail), and between the equivalent of the side-plates and the other material or rail; but under the said first construction assumed such difference would be immaterial, because every possible means of suitably connecting the parts together so that expansion and contraction might be accommodated would be comprehended within the broad construction assumed. If, on the other hand, the combination recited in the second claim be the second one stated by me in my answer to question 6, then the structure produced by putting together the rails and appurtenances recited in the said New Castle specification, as exemplified by Defendant's Exhibit New Castle and Frenchtown Rail, as far as it shows it, and as described by the defendant's witnesses on this subject, and as put together either with or without the washer, would not embody in substance the structure or combination recited in said second claim, because the former would lack two essential features of the latter, namely, means substantially such as are described in the said reissue 4870, by which the adjusting bolt and slotted side-plates of their equivalent are suitably connected to and combined with the materials to be connected, which means are the stud 2 or some equivalent projection from one material or article, and the bottom plate 5, forming one piece with the side-plates, and being with its bolts or screws the means through which the side-plates or their equivalent are connected with the other material or article. No such stud and no such bottom plate, and no equivalent for them, are found among the parts mentioned in the said New Castle specification or testified to by defendant's witnesses.

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Adjourned to Thursday, September 20th inst., at 10.30 a. m.

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NEW YORK, *September* 20, 1877..

Met pursuant to adjournment.

Present, E. J. Cramer, esq., for complainants; S. D. Law, esq., for defendants:

Direct examination of Edward S. Benwick, resumed:

14. Q. Have you examined the drawings, defendant's exhibits, severally marked "Drawing No. 1, Baldwin's Locomotive Works," and "Drawing No. 2, Baldwin's Locomotive Works," and Sketch No. 1 of Slotted, Hole and Bolt, and that marked "A B" and that marked "Expansion Plates of Rogers Locomotive Works," and those marked "Copy Expansion Plate from Exhibit Drawing No. 1, Rogers Works," and "Copy Expansion Plate from Exhibit Drawing No. 2, Rogers Works," and copies of which drawings are inserted in defendant's record, opposite

pages 102, 104, 107, 108 and 109, 126, 144 and 145; and the descriptions thereof as given by defendant's witnesses; and do you understand the structures or devices represented in such drawings?

A. I have examined the original exhibits of the copies referred to in the question, and have read the descriptions of the defendant's witnesses in reference thereto. I believe that I understand the construction and operation of the structures and devices represented in each of said drawings.

15. Q. Look at the models now shown you, and state what they represent and how they agree with the drawings mentioned in the last question.

A. The model marked "Defendant's Exhibit A, Sept. 20, 1877, K. G. W., Ex'r," is a substantial representation of the structure represented in Defendant's Exhibit Drawing No. 2, Baldwin Locomotive Works, so far as relates to the provision for allowing movement by expansion and contraction. It is also a representation of the structure repre-
349 sented by the first two sketches of the drawing marked "A B." It is also a substantial representation of the structure represented in "Defendant's Exhibit Drawing No. 1, Baldwin Locomotive Works," so far as relates to the provision for movement by expansion and contraction; differing from this structure, however, in the immaterial respect that the bolt through the expansion lug and frame is reversed or put in head downwards, instead of head upwards as represented in drawing No. 1. The model marked "Defendant's Exhibit B, Sept. 20, 1877, K. G. W., Ex'r," is a substantial representation of the structure represented by the last two sketches of drawing marked "A B," and represents the parts when constructed without the lower rail frame and thimble-filling piece sketched in the drawing; and I understand from the evidence of the witness Charles T. Parry, taken in connection with said original drawing A B (in which the said lower rail-frame and thimble or filling piece are sketched in pencil), that the structure represented was sometimes made without them and sometimes with them. The model "Defendant's Exhibit C, Sept. 20, 1877, K. G. W., Ex'r," is a substantial representation of the structure represented in "Defendant's Exhibit Sketch No. 1 of Slotted Hole and Bolt." It is also a substantial representation of the provisions for expansion represented in "Defendant's Exhibit Expansion Plates of Rogers Locomotive Works," but differs from them in some of the details of the bolts, namely, in the respect that the bolts of the said model "Defendant's Exhibit C" are plain-stemmed bolts instead of having shoulders, as represented at 1, 1, "Defendant's Exhibit Expansion Plates of Rogers Locomotive Works," and are without the thimbles described by the witness Hudson, and represented at 2, 2, in said "Defendant's Exhibit Expansion Plates of Rogers Locomotive Works." The said model "Defendant's Exhibit C" is also a substantial representation of the provisions for expansion represented in defendant's two exhibits "Copy Expansion Plate
350 from Exhibit Drawing No. 1, Rogers Works," and "Copy Expansion Plate from Exhibit Drawing No. 2, Rogers Works;" the said model, however, has the bolts which are not shown upon the first of the said two exhibits, and it is not as long as the structure represented in the said two exhibits, nor does it have as many bolts as are indicated by the letters "D, D, D, D," upon the last of the said two exhibits.

(The models marked Defendant's Exhibits A, B, and C are put in evidence by defendant's counsel.)

15. Q. Do you find shown in the said drawings, the defendant's exhibits mentioned in question 14, as explained by the testimony of defendant's witnesses, and as illustrated in the models Defendant's Exhibits A, B and C, any device or structure similar to and operating substantially in the manner described in Complainants' Patent, Reissue 4870, as you understand said patent and the structure described and claimed therein?

A. Having in view the understanding of the structure recited in the first claim of the said reissue No. 4870, which is given by me in my answer to question 5, I am of opinion that each one of the structures represented in the exhibits mentioned in question 14, and in the Defendant's Exhibits A, B, and C, lacks one essential feature or part of the self-adjusting fastener recited in the said first claim, namely, the bottom plate 5, by means of which the two side-plates are combined together. If, however, it should be assumed that the said self-adjusting fastener is not restricted to a device containing the bottom plate, or its equivalent, as an essential member or part of it, then I should say that every one of the structures represented by the exhibits mentioned in question 14, and every one of the said model Exhibits A, B and C contains, substantially, the same structure as is recited in the said first claim, because in each one of them there is a side-plate or plates, and in
351 each one of them there is a bolt or bolts, and in each one of them there is one or more slots, elongated holes or bearings for the said bolt or bolts, so that longitudinal expansion is permitted. In reference to the structures represented in the said "Exhibit Drawing No. 1" (opposite page 102 of defendant's record), "Drawing No. 2," page 104, "Drawing A, B," model "Defendant's Exhibit A," and model "Defendant's Exhibit B;" either of the two plates which are movable relatively to the other by expansion and contraction may be regarded as the side-plate. If the upper one of the two be regarded as the side-plate, then the slot or elongated bearing is in it, as it is in the side-plates represented in the drawing of the said Reissue No. 4870. If, however, the lower part of the two plates of the said exhibits is to be regarded as the side-plate, then the slot or elongated bearing for the bolt is not in the side-plate, but is in the thing to which that side-plate is applied. But in both cases the slot or elongated bearing for the bolt permits movement by expansion and contraction; in both the mode of operation is the same; in both the slot exists, and both are, in my opinion, substantial equivalents for the structure recited in the first claim of said reissue, if that structure be not restricted to the bottom plate 5, as one of its parts. The fact that there is only one plate represented in some of these exhibits does not, in my opinion, change the substantial identity of the devices of the said exhibits with that of the said first claim under the assumed construction of it last-mentioned by me, because the use of two plates instead of one is simply a matter of degree, so far as relates to longitudinal movement. But even if two side-plates are considered important, then the first two sketches of the drawing A B and the model Defendant's Exhibit A show substantially two side-plates, or the equivalents of two, these being the upper rail of the frame at the one side, and the washer under the nut of the bolt on the other.

On the other hand, the structure represented in the said Defendant's
352 Exhibit Sketch No. 1, &c., opposite page 107; the structures represented in Defendant's Exhibit Expansion Plates, &c., opposite page 126; those opposite pages 144 and 145, and Defendant's Exhibit C, all show two side-plates. It is the fact that in these cases the expansion slots or bearings for the bolts are in the piece intermediate be-

tween the two plates instead of in the plates; but, as I have above stated, these slots exist in the said exhibits and perform the same functions and have the same mode of operation as those of the said Reissue 4870, and therefore the difference is a mere difference in position or arrangement depending upon the judgment of the constructor, and not a difference, in my opinion, in principle. As respects the structure recited in the second claim of the said Reissue 4870, I am of opinion that if the understanding of the said structure first stated in my answer to question 6 be the true one, then every one of the structures represented in the exhibits mentioned in question 14, and each of the models Defendant's Exhibits A, B, and C, contains substantially the structure of the said second claim, because every one of them contains substantially the same combination of one or more adjusting bolts, slotted side-plates or their equivalents, two articles or materials to be connected together with a capacity of movement by expansion and contraction, and suitable means of connecting the adjusting bolt and slotted side-plates or their equivalents with the materials or articles to be fastened together. It is the fact in the said exhibits that the elongated slots of some of them are in the member intermediate between the plates; as for example, in those represented substantially by Defendants' Exhibit C; while in others of the said exhibits the slot may be regarded as being either in the side-plate or in one of the other members according to which of the two is regarded as side-plate; but I do not consider that these circumstances change the substantial identity
353 of the exhibits with the structure recited in the said second claim under the understanding thereof first mentioned in my answer to question 6, for the same reasons as are given by me in that answer in reference to similar modifications. If the understanding of the structure recited in the second claim of said Reissue 4870 be the second one given in my answer to question 6, then each of the said defendant's exhibits mentioned in question 14 differs from said structure by lacking only one part of the entire combination recited in the said second claim, namely the bottom plate 5 by which the side-plates or flanges are connected with the article to which they are applied. Thus, an examination of Defendant's Exhibit C, and of the exhibits of which it is a substantial representation, as previously stated by me, shows that it has two bolts, each of which is an equivalent of the adjusting bolt of the said reissue; it has two plates with bolt-holes in them, which are the equivalent of the slotted side-plates of the said reissue; it has two articles or materials to be fastened together, namely, the boiler on one side and the frame on the other; it has a substantial equivalent of the stud 2, namely, the "expansion lug" which projects from the metallic boiler in like manner with the projection of the stud 2 from the plate of the metallic roofing; and it lacks only some equivalent for the bottom plate 5 of the said reissue. It is the fact that in all of the exhibits represented by Defendant's Exhibit C the holes in the piece intermediate between the two plates are elongated so as to form slots, instead of the holes in the said two plates being elongated; but this difference, as I have previously stated, is in my opinion immaterial, because the same device (an elongated hole or slot) is provided to permit the movement, and the mode of operation is the same. In the exhibits of which Defendant's Exhibits A and B are substantial representations there is but a single side-plate if the member containing the elongated slot is regarded as the side-plate; but in such cases the said one side-plate
354 would, in my opinion, be the equivalent of two in the combination or structure of which it or they formed part, for the rea-

sons previously mentioned by me when speaking of this subject; while if the other member be regarded as the side-plate, then it with the washer under the nut of the bolt in Exhibit A, and in the first two sketches of the drawing A, B (page 108), constitute two side-plates, between which the lug is permitted to move by expansion and contraction.

16. Q. Have you examined the two end-pieces of rails and the two splicing or fish plates, and the bolts and washers, all severally marked "Defendant's Exhibit Oswego & Syracuse Rail Joint, 1850," and have you read the testimony of defendant's witnesses in relation to such exhibit and the use thereof, and do you understand such exhibit and the said testimony?

A. I have examined the exhibits referred to in the question; I have also read the testimony of the defendant's witnesses in relation thereto, and believe that I understand the construction and operation of the said exhibits.

17. Q. Do you find in such exhibit, when taken in connection with such testimony, any device or structure similar to and operating substantially in the manner described in Complainant's Patent, Reissue 4870, as you understand said patent, and the structure described and contained therein?

A. Having in view the understanding of the structure recited in the first claim of reissue 4870, which is given in my answer to question 5, I am of opinion that the exhibit referred to in the question lacks one essential member of the structure referred to in the said first claim, namely, the bottom plate 5. The said defendant's exhibit has undoubtedly two side-plates, which have slots or holes in them for the bolts, and it has also several bolts, each of which corresponds substantially with the bolt of the structure recited in the said first claim; but inas-
355 much as the said defendant's exhibit has no bottom plate by which the two slotted side-plates are connected, and of which they constitute "flanges," as stated in the said reissue, the said exhibit lacks one of the essential features of the said structure, and, therefore, in my opinion, does not embody it. If the first understanding given by me, in my answer to question 6, of the structure recited in the second claim of the reissue, be the correct one, then the said defendants exhibit mentioned in the question embodies in substance that structure; each of the bolts of the said defendant's exhibit corresponding with the adjusting bolt of the said second claim; the two splicing-plates of the said exhibit being slotted side-plates, and corresponding substantially with the slotted side-plates of the said claim; and the two ends of the rail corresponding substantially with the two articles or materials referred to in the said second claim. In forming this opinion, I have taken into consideration the fact that in the said defendant's exhibit the adjusting bolt and the slotted side-plates are connected to and combined directly with the two articles or materials, which are the two rails, instead of being connected with them through the intervention of a stud and bottom plate, as represented and described in the said reissue. I have also taken into consideration the fact that in the said defendant's exhibit the two materials or articles (the rails) are connected so as to move in the same plane instead of being connected by projections so as to move in the parallel planes as the materials are in the said reissue; but if the said first understanding of the structure of the second claim given in my answer to question 6 be the correct one, then these differences are immaterial. If the second understanding given by me in my answer to question 6 of the structure recited in the said second claim be the true one, then the said Defendant's

Exhibit Oswego and Syracuse Rail-joint, 1850, does not embody in substance the said structure, because, although the said defendant's exhibit has adjusting bolts corresponding substantially with that
356 of the said claim, and has slotted side-plates, and has the said bolts and slotted side-plates connected to and combined with the materials to be fastened together, with the same capacity of accommodating the expansion and contraction of the materials, which are the rails, yet the said defendant's exhibit has no means substantially such as the "stud 2" and "the bottom plate 5," through which the adjusting bolt and slotted side-plates of the said reissue 4870 are suitably connected to and combined with the materials to be fastened together; and has no equivalents for either of such means of said reissue. Consequently, under the said second understanding of the structure of said second claim, the combination found in the said "Defendant's Exhibit Oswego and Syracuse Rail-joint, 1850," lacks two of the essential members of the said structure and has no equivalents for them.

18 Q. Have you read the testimony of complainant's expert, J. Boyd Eliot, as to his opinions and reasons therefor in respect to the original form of the holes in "Defendant's Exhibit Oswego and Syracuse Rail-joint?" And state whether, from your examination of such exhibit, you agree or disagree with his opinion in reference to such matter, and give your reasons for the opinion you may express in relation thereto.

A. I have read the part of the testimony of Mr. Eliot referred to in the question, and do not agree with him in the opinion expressed by him, as to the fact that the holes in the side-plates were originally formed with a round tool, either a punch or a drill (the effect of which would be to leave holes round), and to the effect that they became oval by use. The facts mentioned by Mr. Eliot do not appear to me to justify his opinion. For example, in folios 422 and 423, complainant's record, he refers to the oval holes in the piece of rail marked on the top "O. & S. Div., 1848," as showing indications of wear by reason of the parts of the holes nearer the end of the rail being of a smaller circle than
357 the other parts of the holes. Now, it is perfectly evident to me that the form of the said holes was produced by poor blacksmith's work. He also refers in the first part of his answer to the forms of the holes of the splicing-plates, as indicating wear which made them oval; such indication being the fact that the outer ends of the holes, or the ends of the holes which are nearer the ends of each plate, are curves of a smaller circle than the ends of the holes which are nearer the centres of the plates. If his theory were correct, the outer end of every hole should be a curve of a smaller circle than the inner end of the same hole is; but I find that in one of the holes this indication is reversed, namely, in the hole in which I have tied a piece of red tape, where the outer end of the hole is larger than its inner end is. On the other hand, I am satisfied that if the holes in the rails and in the splicing-plates had been all originally round and of the sizes shown in the rail marked "D. L. and W. R. R.," and if wear was able to change any of the holes to the oval forms of those of the splicing-plates, such wear would have taken place in the rail rather than in the splicing-plates, for the following reason: The rail and splicing-plates are of the same material, iron, and were subjected to the same strain by expansion and contraction, the strain, however, being in the opposite directions, and the general rule is that if pieces of the same material are worn in opposite directions by the same strain, the piece or pieces which would be most worn are those that present the least surface to the moving object. Now in the present case the combined thickness of the two splicing-plates is materially

greater than the thickness of the web of the rail; so that if the holes were originally all of uniform size and all round, and the bolts fitted the holes, the combined surfaces of the holes in the two splicing-plates (being considerably greater than the surface of the corresponding hole in the rail) would have opposed the movement of the bolt more
358 strongly, and would consequently have worn less than the hole in the rail; and if elongation by wear had taken place, the holes of the rails would have become elongated or oval, rather than the holes of the splicing-plates. I gravely doubt, however, whether it would be possible to have round holes of the sizes found in the rail marked D. L. and W. R. R. converted into oval holes such as are found in the splicing-plates by mere wear. In the experiments that have been made to ascertain the strength of riveted joints by pulling them apart in such direction as to cause one of the plates to slide upon the other, the tendency has been to shear off the rivet rather than make the holes oval; and if the holes in the splicing-plates of the said defendant's exhibit had been originally round, the presumption is that the riveted bolts would have become oval more readily than the holes of either the rail or splicing-plates; and I doubt whether it would be within the limits of possibility to wear round holes into the oval form and size seen in the splicing-plates by all the wear which would take place on a railroad in a great number of years. I am, therefore, of opinion that the holes in splicing-plates in the said Defendant's Exhibit Oswego and Syracuse Rail-joint, 1850, were made oval before they were used upon the railroad. I do not mean to say that their forms may not have been changed to some extent by wear, because this may or may not have been the case, but I have no doubt that the holes in the splicing-plates were not originally made round and changed to their present oval size by wear alone. I have also no doubt that the present elongated form of the holes in the rail marked O. & S. Div., 1848, is the result of careless blacksmith work, and not of wear from a round form; for if it had been produced by wear those ends of the holes which are of the smallest curvature would have become more or less smoothed by the wear, instead of having the rough and jagged surface which they now present.

Adjourned to the 21st inst., at 10½ a. m.

359 NEW YORK, *September* 21, 1877.

Met pursuant to adjournment.

Present, counsel as before.

Direct examination of Edward S. Renwick resumed:

19. Q. Have you examined the exhibit marked Defendant's Exhibit Section of One-half of Compound Rail, and have you read the testimony of defendants in respect thereto, and do you understand the same, and do you find in the said compound rail, when laid as testified to by the witness, any structure or device similar to and operating substantially in the manner described in Complainant's Patent, Reissue 4870, as you understand the structure described and claimed therein? And give your reasons for any opinions you may express.

A. I have examined the defendant's exhibit referred to in the question, and have read the testimony of the defendants in respect thereto, and believe that I understand the same. It may also be proper to state that I saw compound rails, substantially such as are described by the said witnesses, in use on railroads more than twenty years ago, and as early, I think, as the year 1854, so that I understand its construction and operation.

Having in view the understanding of the improvement recited in the

first claim, which is given by me in my answer to question 5, I am of opinion that the so-called half rail, marked "Defendants' Exhibit, Section of One-half of Compound Rail," when combined with the rivets mentioned by the witness Reed, is a substantial embodiment of the structure recited in the said first claim, for the following reasons: I know that in practice the base of the half rail was connected by hook-headed spikes with wooden cross-ties of the road so that the said half rail and its rivets formed part of the means by *by* which the other half of the compound rail was connected with the said cross-ties; the other part
360 of said means being the spikes applied directly to the base of the said other half. The said exhibit half rail is perforated with oval holes or slots forming bearings for rivets or bolts, so that the rivets or bolts which connect it with the other half rail were permitted to move in the said oval holes or slots, and permit the movement of the said other half rail by contraction and expansion. Hence the said half-rail exhibit has a bottom plate (the base) which corresponds substantially with the shoe or bottom plate 5 of the said reissue 4870; it has also a side-plate or flange (the upright web of the half rail) which corresponds with one of the two side-plates or flanges of the said reissue; and it has also rivets or bolts which are passed through holes in the said flange or web, of larger size than the said rivets or bolts, in the same manner as the bolts of the said reissue pass through corresponding holes. The mode of operation of the said half rail is also substantially the same as the mode of operation of the said adjustable fastener of the said first claim of the said reissue, and the purpose for which it is used is the same; because, among other things, it is used, as above stated by me, to connect the other half rail (which is of metal) with the wooden cross-ties of the road. In forming the above opinion I have taken into consideration the fact that the said exhibit half rail is much longer than the self-adjusting fastener represented in the drawings of the said reissue; and also that the former has a number of slots throughout its length, while the said self-adjusting fastener, as represented in the drawing, has but one. But if my understanding of the nature of the said self-adjusting fastener of the reissue is correct, then these differences are immaterial, because the first difference is simply one of degree, namely, an extension of length; while the second is a mere duplication of holes; and neither difference changes the kind of mode of operation which the device had. I have also
361 taken into consideration the fact that the said exhibit half rail is employed not only to connect the other half rail with the cross-ties beneath, but is employed also to connect the other half rails longitudinally with each other; but the fact that the said half rail is employed for two purposes, one of which is additional to anything specifically mentioned in the said reissue, appears to me to be immaterial in view of the fact that one of the purposes for which the said compound half rail was used, was the same in substance as that for which the said self-adjusting fastener is described in the said reissue as being used, namely, to connect metal with a wooden structure (the cross-ties) beneath it; it also appears to me to be immaterial in view of the broad statement of the said reissue, printed in folio 542 of complainant's record, and commencing with the words "I contemplate." I have also taken into consideration the fact that the said exhibit half rail has but a single flange projecting upward from its bottom plate, while the former self-adjusting fastener represented in the drawings of said reissue has two flanges projecting upward from its bottom plate; but I do not consider this difference material, in view of the

fact that nothing is said in the said reissue of the advantage of two flanges rather than one; that the said two flanges are not required to have any lateral confining action upon the stud or article between them, and that for the purpose of connecting a metal article or material with another article or material, with the capacity of movement by expansion and contraction, a single flange containing slots is a mechanical equivalent for a pair of flanges containing slots; the latter for such a purpose being a mere duplication of the former, when they are not required to exert a lateral confinement upon the article between them. Two flanges would, of course, hold the bolt more strongly than a single one, but this difference is merely one of degree of strength, and, therefore, according to my view, does not affect the sub-
362 stantial identity or equivalency of the two constructions. On the other hand, if the invention is of so broad a nature as to be used "as a general fastener where it is necessary to allow for the contraction and expansion of the material used not confining" it "to building only," as stated in the said paragraph of said folio 542, above mentioned by me, it is clear that its construction must be modified to suit the circumstances of any particular case; and the construction of the self-adjusting fastener with a bottom plate, a single slotted flange and bolt, in place of with a bottom plate, a pair of slotted flanges and a bolt, is no more than such a modification as would be within such general purpose in the absence of any statement that the invention was limited to two slotted flanges, and of any description of any object attained by the use of two slotted flanges over that attained with one for the purpose of connecting materials with the capacity of moving by contraction and expansion. As respects the subject-matter of the second claim, I am of opinion that if the first understanding of the combination of the second claim given by me in my answer to question 6 be the correct one, then the structure of which the said Exhibit Half of Compound Rail formed part embodied in substance the combination or structure recited in the said second claim, for the following reasons: The structure of which the said half of compound rail formed part, consisted of the other half rail having round holes in it for the rivets or bolts; of the rivets or bolts of the slotted half rail forming a side-plate for the other half rail, and of the wooden cross-ties with which the two half rails were connected, and with which also the rivets were connected through the intervention of the half rail. In this structure each of the rivets corresponded substantially with the adjusting-bolt of the said second claim; the half compound rail with oval holes, forming a slotted side-plate for the other half rail, was a substantial equivalent for the slotted side-plates of the said second claim; the other
363 half rail with round holes and the wooden cross-ties corresponded substantially with the materials to be fastened together, recited in the said claim. Moreover, there was a suitable connection and combination between the adjusting-bolt or rivet and the slotted side-plate of the said rail structure with the materials to be fastened together, which last were the other half rail and the wooden cross-ties, the connection and combination of the slotted side-plate of the said rail structure with the wooden cross-ties being through the intervention of substantially the same instrumentality as is described in the said reissue, namely, the bottom-plate to which the said slotted side-plate is a flange or projecting web. In forming the above opinion as to the subject-matter of the second claim, I took into consideration all of the differences between the rail structure of which the said Exhibit Half of Compound Rail was a part and the exact structure represents in the

drawings of said reissue, which differences I have mentioned when speaking of the subject-matter of the first claim; but if the understanding first given by me of the structure or combination of the second claim be the correct one, these differences are immaterial for the same reasons as I have given in the preceding part of this answer in reference to the said first claim. I also took into consideration the fact that in the said rail structure the rivets, while self-adjusting in the side-plate or flange of one-half rail substantially the same as described in the said reissue, are connected and combined directly with the other half rail, instead of being connected and combined with it through the intervention of a stud such as is represented and described in the said reissue for connecting the bolt with the metallic roof; but if the first understanding given by me of the said structure of the said second claim be the correct one, then this difference is immaterial; because a direct connection of the bolt with one of the materials would be a suitable connection for the purpose of accommodating the expansion and contrac-

364 tion of such materials, and being a means of connecting a bolt with a material or article which was common and well known long prior to the date of the original patent, would be a modification which was contemplated under the broad statement of the reissue 4870, before referred to by me, as printed in folio 542 of complainant's record. If the second understanding of the structure of reissue 4870, recited in the said second claim, given by me in my answer to question 6, be the true one, then the rail structure, of which the said Exhibit Half of Compound Rail formed part, did not, in my opinion, embody in substance the structure or combination recited in the said second claim, for the following reasons: The said rail structure consisted of the following devices, viz, the bolts which were self-adjusting by permitting to move in oval holes or slots; the slotted side-plate, formed by the half compound rail with oval holes; the other half rail with round holes; the wooden cross-ties to which the half rails were spiked; and the base of the half rail with oval holes, together with the spikes, by which the bases of both half rails were combined and connected with the wooden cross-ties. Now, although in this rail structure each of the rivets or bolts corresponded with the adjusting bolt of the said second claim; and although the half rail with oval holes was an equivalent for the slotted side-plates of the said second claim; and although the other half rail (with round holes) and the wooden cross-ties corresponded, substantially, with the materials of the said second claim, to be fastened together for the purpose of accommodating the expansion and contraction of such materials with reference to each other; and although the said structure contained a means (the base rail half of the) for making the connection and combination of the adjusting bolt and equivalent of the slotted side-plates with the materials or articles, which means corresponded substantially with one of the means for the same

365 purpose (the bottom plate 5) described in the said reissue; yet the said rail structure lacks the other means (the stud 2) for making the said connection and combination described in the said reissue, and has no equivalent for it. Hence the said rail structure lacks one member of the structure recited in the said second claim, if the second understanding of that structure given in my answer to question 6 be the correct one.

In forming my opinion as above expressed on the subject of the said rail structure and the structure of the said second claim, according to my said second understanding of it, I took into consideration the fact that the said rail structure differed from the structure represented in

the drawings of the patent in the respect, first, that the rail structure contained more bolts or rivets than one for each slotted side-plate or half rail; second, that in the said rail structure the slotted side-plate or half rail and its bottom plate or base were longer than those represented in the drawings of the said reissue; third, that in the said rail structure there was but one slotted side-plate or half rail projecting from the bottom plate or base, while in the structure represented in the drawings of the patent there are two slotted side-plates projecting from the same bottom plate or base; fourth, that in the said rail structure the slotted side-plate, its base or bottom plate and the rivets or bolts are employed not only to connect the other metallic half rail with the wooden structure beneath, but are employed also to connect two of the other half rails longitudinally with each other by reason of the slotted side-plate and base being made long enough to lap by the ends of two of the other adjacent half rails with round holes. But I do not regard these differences as material under the second understanding above mentioned by me for the following reasons: The first difference mentioned is a mere difference of the number of bolts or a duplication of some of the parts. The second difference mentioned is a mere difference in the length of some of the members, and is a mere
366 difference in degree. The third difference is, in my opinion, immaterial, because a single slotted side-plate or flange is the equivalent of a pair of slotted side-plates or flanges in the structure recited in the claim for the purpose also recited in the claim; and because no advantage is set forth in the reissue as attained by the use of a pair of slotted side-plates over one; and because no lateral confining action is made essential to the combination (lateral movement, on the contrary, being permitted, as shown in Fig. 3 of the said reissue), and because the employment of a single slotted flange or side-plate as an equivalent for a pair of them would be a modification contemplated under the statement of the reissue before referred to by me, as printed in folio 542, complainants' record, even though the more narrow understanding of the structure of the said second claim, given in my answer to question 6, be the true one. The fourth difference is not, in my opinion, material, because the fact that some portions of the said rail structure are used for a purpose additional or supplementary to any that is mentioned in said reissue does not change the fact that they also perform substantially the same purpose as is required of them by the said reissue.

(Counsel for complainant' objects to those portions of the answer of the witness in which he testifies to his knowledge of the use of the so-called compound rail, on the ground that no notice is given in the answer of the defendants herein of the name of this witness as being one of the persons by whom and who had knowledge of the place where there was a prior use of structures or devices alleged to be similar to those mentioned and described in complainants' reissued letters patent.

Counsel for defendant insists that no such notice was neces-
367 sary in respect to such testimony, as it relates rather to the state of the art existing at the time of complainants' patent than to such matters in respect to which any notice under the statute is required.

Counsel for complainants claims that the witness has undertaken to fix a date as to the use of a structure which he alleges anticipates the invention described and claimed in complainants' reissued letters patent, and that if defendants intend to rely on this evidence, as matter

of fact to prove a prior use of such invention, that then complainants were clearly entitled to the notice prescribed by the statute.

Counsel for defendant replies that the witness has testified as to a structure proved to have been made and used by other witnesses called by defendant and of whom notice has been given as required by the statute; and that the present witness has only incidentally mentioned in his testimony that he, himself, had seen a compound rail in use; and that it appears from the testimony of such other witnesses and that of the present witness that the compound rail spoken of by such other witness was made and used prior to the time the present witness saw such a rail in use; and that, therefore, it is apparent that the testimony of this present witness considered in connection with the last question has relation to the compound rail referred to and established by the previous witnesses in this case, and not to the compound rail he mentions as having seen himself.

Counsel for complainants maintains that the explanation of counsel for defendant in no way alters the state of the case, or of the objection. The complainants were entitled to notice of all persons who were supposed to have knowledge of an alleged prior use of the invention described and claimed in complainants' reissued letters patent. Whether the witnesses of whom notice was given have established the use of the so-called compound rail or not, is a question for the
368 court to decide; and upon that point the counsel for the complainant differs from the counsel for defendant. But be that as it may, the statute provides that notice shall be given in the answer of the defendants of the person by whom, and of the places where, such prior use was known and made; and no such notice having been given in regard to this witness, counsel insists upon his objection.

Counsel for defendant thinks the objection of complainants' counsel not well taken, but further states that, should the court take the same view that complainants' counsel does of this matter, that the court will be asked upon the hearing of this cause to allow the answer of the defendant to be amended by inserting therein the name of this witness; and that complainants' counsel may have full knowledge where this compound rail, seen by the present witness, was used, he will ask the witness the further question—where, on what railroad, it was that he saw the compound rail he referred to?

Complainants' counsel objects on the same grounds to this last question, and gives notice that on the hearing of this cause he will move to strike out all testimony of this witness as to alleged prior use.)

20. Q. Where was it, on what railroad, that you saw in use the compound rail that you have mentioned in your last answer that you saw in use?

(Objection repeated.)

A. My recollection is that I saw it about the date mentioned by me in use upon the line of the Baltimore and Ohio Railroad. It is, however, so long ago that I should have to refer to account-books and other matters not now before me, in order to make me certain as to my recollection; such accounts would enable me to fix the date, and some other matters to which I could refer would enable me to fix the place.

369 Q. 21. Have you examined the testimony of defendants in this case as to the use of the flat or strap rail, so called, and how used, an illustration of which rail is shown in the drawing "Defendant's Exhibit Utica and Schenectady Flat Rail, 1836," and do you understand the same? And state whether you find in such testimony and

exhibit any structure similar to or operating substantially as the structure described in Complainant's Patent, Reissue 4870, as you understand said patent and the structure described and claimed therein; and give your reasons for any opinion you may express.

A. I have examined the testimony of defendants and the drawing referred to in the question, and believe that I understand the same. There is a similarity in principle between the structure thus described and represented and those recited in the claims of the patent, in the respect that in both cases there are materials to be connected in such manner as to accommodate expansion and contraction of such materials with reference to each other; in both cases, also, the connection is made by means of a slotted side-plate and bolts, or their equivalents, passing through the oval holes or slots of said side-plates. But having in view the understanding given by me in my answer to question 5, of the structure recited in the first claim of the patent, I am of the opinion that the rail structure represented in said "Defendant's Exhibit Utica and Schenectady Flat Rail, 1836," lacks one essential feature of the structure of the said first claim; that is to say, it lacks a bottom plate such as the bottom plate 5, from which the side flanges of the self-adjusting fastener of the said reissue project, and the said rail structure also has no equivalent for said bottom plate. If the first understanding of the structure recited in the second claim of the said reissue given by me in my answer to question 6 be correct, then the said rail structure of the said defendant's exhibit embodies substan-
370 tially the structure of the said second claim; because the spikes of the said rail structure passing through the oval slots or holes of the splicing-plate, are each an equivalent for the adjusting bolt of the said claim; the slotted splicing-plate of the said rail structure at the under side of the rails is a substantial equivalent of the slotted side-plates of the said second claim; and the two rails of the said rail structure are substantially the same as the two materials to be fastened together of the said second claim. Moreover the purpose of the structure is, among other things, to accommodate the expansion and contraction of the rails with reference to each other. In expressing this opinion I have taken into consideration the fact that the said rail structure has but one slotted side-plate, while in the structure represented in the drawings of the patent there are two. But I do not regard this difference material, for the same reasons that have been given by me previously in reference to a similar difference existing in other exhibits. I have also taken into consideration the fact that in the said rail exhibit the slotted side-plate is at the under side of the rails, instead of at one of their upright sides; but this difference I do not regard as material, because it is a mere change of position, and would be a use within that contemplated by the paragraph of the reissue printed at folio 542 of complainants' record. I have also taken into consideration the fact that in the said rail structure the spikes which correspond with the bolt of the said reissue have a head at one end as they are represented to have in the drawings of the reissue, but are kept in position by having their other ends driven into a piece of wood, instead of having that end formed into a rivet head, as it is represented to be in the drawings of the said reissue; but I do not regard this difference as material, because in either case the bolt or spike is held in place by a well-known mode, and whether it be held in place by having one of its ends formed into a head, or by having it screwed and fitted with a
371 nut, or by having it driven into a piece of wood, the practical effect is the same; that is to say, the bolt is held in its place. I have

also taken into consideration the fact that in the said rail structure the bolt or spike holes in the articles fastened (the rails) are oval, or slots, as well as the holes in the splicing-plate; and that the hole in "the stud 2" of the said reissue is round; but I do not regard this difference material, because if a person should use a structure exactly the same as that represented in the drawings of the patent in every particular except that the hole in the stud 2 was oval or a slot having the same derection as the oval hole in the flanges or side-plates, such person would still use the whole of the invention described in the said reissue, although he might have modified the construction somewhat by making the stud hole elongated in a direction parallel with the slot of the side-flanges. If the second understanding of the structure of the said second claim, given by me in my answer to question 6, be the correct one, then in my opinion the said rail structure of the said defendant's exhibit does not embody in substance the structure recited in the said second claim; because, under such understanding, the self-adjusting bolt or spike, the side-plate or splicing-plate, and the rails to be fastened, are combined and connected together without the use of anything corresponding substantially with "the bottom plate 5" and with "the stud 2" described in the said reissue; and because no equivalent for the said "bottom plate 5" and the said "stud 2" *as* found in the rail structure of the said defendant's exhibit.

Adjourned to Monday 24 Sept., inst. at 10:30.

372 MONDAY, *September* 24, 1877.

Met pursuant to adjournment.

Present, counsel as before.

Direct examination of Edward S. Renwick continued.

Q. 22. In your answer to Q. 19, as to the Exhibit Compound Rail, and in which answer you alluded to a compound rail which you had seen on some railroad, did your answer have reference to any feature of construction which was peculiar to the compound rail you saw in use, and which was not described in or implied by the testimony of defendant's witnesses as to the compound rail?

(Last objection and notice repeated.)

A. My answer did not. The witnesses describe the construction of the two parts of the compound rail and the rivets by which they were connected. Moreover, the witness Ricker speaks of seeing the rail in actual use) see page 43, def't's record, fol. 171), which statement, as I understand it, necessarily implies the use of the rail in connection with the wooden superstructure of the railroad and its fastening thereto in the ordinary way, by spikes. The general form of superstructure, so far as I know, was cross-ties, although longitudinal wooden rails immediately under the iron rails were sometimes used. My answer would apply equally to either form of wooden superstructure, as each being of wood is less affected by heat than the rail which is of metal.

Q. 23. In your answer as to what you consider to be the structure or device described and claimed in the Complainant's Patent, Reissue No. 4870, have such answers in any way been based upon or modified by the various exhibits, aside from such patent, which have been put in, in this cause, and to which your attention has been called?

373 A. The understanding which I have given in my answers of the structures recited in the first and second claims of the reissue 4870 were derived from the description and drawings of the reissue itself, and have not been in any way based upon or modified by the

various exhibits, aside from such reissue, to which my attention has been called in this case.

Q. 24. Look at the exhibit now shown you marked "Complainants' Exhibit No. 2," and the testimony of complainants' witness, Thos. S. Sandford, Complainants' Record, pp. 20, 24, as to the use of such exhibit, and state whether in your opinion such exhibit and the structure of which it was a part, contains the structure described and claimed in Complainants' Exhibit, Reissue 4870, as you understand such reissue, and give your reasons for any opinion you may express.

A. Having in view the understanding of the structure recited in the first claim of the reissue 4870, as given by me in my answer to Q. 5, I am of opinion that the said Complainants' Exhibit No. 2, does not embody in substance the structure recited in the first claim of said reissue, because it lacks one essential feature of the latter structure, viz, the bottom plate by which the two side flanges of the said structure are combined together and connected with the article or material to which the structure is to be applied. The said Complainants' Exhibit No. 2 also contains no equivalent for such bottom plate. If the first understanding of the structure recited in the second claim of the said reissue 4870, which is given by me in my answer to Q. 6, be correct, then I am of opinion that said Complainants' Exhibit No. 2, when used as testified to by the said witness Sandford, in combination with the rails, embodies in substance the combination or structure recited in the second claim of the reissue for the same reasons which have been given by me in my answer to Q. 17, in reference to the Defendants' Exhibit Oswego and Syracuse Rail-joint, 1850, when compared with the structure
374 of the said second claim. If the second understanding given by me in my answer to Q. 6, of the structure or combination recited in the said second claim be the true one, then I am of opinion that the said Complainants' Exhibit No. 2, when used as testified to by the witness Sandford, in combination with the rails, does not embody in substance the structure or combination of said second claim. My reasons for this opinion being the same as those given by me in the last part of my answer to Q. 17, on the subject of a comparison of Defendants' Exhibit Oswego and Syracuse Rail-joint 1850, with the structure or combination of said second claim under the same understanding.

(Defendant's counsel puts in evidence a certified copy of the letters patent No. 17331, dated May 19, 1857, granted to Asa Johnson, William Higbie and Henry Link, being the original letters patent of which Complainants' Exhibit No. 1, Reissued 4870, is a reissue, and the same is marked "Defendants' Exhibit Original Johnson Patent, Sept. 24, 1877, K. G. W., Ex'r.")

Q. 25. Have you examined the patent marked "Defendant's Exhibit Original Johnson Patent," and do you understand the same, and what, in your opinion, constitutes the self-adjusting fastener therein described? And give your reasons for any opinion you may express?

(Objected to as immaterial.)

A. I have examined the original Johnson patent referred to in the question, and believe that I understand the same. The self-adjusting fastener described in that original patent, as I understand the same, is a compound device, comprising the following parts, viz, the stud 2, the flanges 4, or their equivalent, the bottom plate 5, the pin 3, passing through the stud 2, with the holes or slots in the flanges 4 4. I understand, of course, that the device comprehends substantial me-
375 chanical equivalents of its parts, and therefore comprehends one flange as an equivalent for two, and an elongated hole or slot in

the stud (in place of a round hole) and round holes in the flanges, instead of a round hole in the stud and elongated holes or slots in the flanges, in case it be expedient to make this transposition of holes. My reasons for this opinion are as follows: I find that the said original patent contains the statements that "Fig. 3 is an end elevation of the self-adjusting fastener," and "Fig. 4 is a side elevation of the same." I further find that each of these "fig's" contains every one of the parts I have above mentioned, and that there are also two paragraphs in the said original patent, having reference to the said two Figs. 3 and 4, which describe every one of said parts. I also find that there is no statement or intimation in any part of the original patent that the stud 2 does not form part of the device, or that it can be dispensed with, or that it is not just as essential to the self-adjusting fastener as the side-flanges 4, or the bottom-plate 5, or the pin 3. The said self-adjusting fastener, therefore, as described in said original patent, comprehends every one of the said parts which I have above mentioned, and the application of it, which is represented in the drawings of the patent, requires for its successful use every one of the said parts, or its substantial mechanical equivalent. When making the above statement I had in mind that the said Figs. 3 and 4 represent not only the parts I have mentioned as constituting the compound device called the self-adjusting fastener in the original patent, but represent also 3 screws and an India rubber cord. I have not, however, understood these screws and cord to be essential members of the compound device of the self-adjusting fastener, because the screws are described in the specification simply as means of firmly fastening the iron covering to the stud and the bottom plate to the wood sheeting, while the India rubber cord is described simply as a device for enabling the stud to be held erect until it is made fast to the metal covering.

376 Q. 26. Do you find in said original patent any declaration, intimation or suggestion that any part or element of such compound device or self-adjusting fastener is intended to be or can be omitted in using said self-adjusting fastener in any place or for any purpose?

(Same objection.)

A. I do not.

Q. 27. Could the self-adjusting fastener, as described in said original patent, be applied to or used upon railway tracks for the purpose of fastening the rails together, and at the same time provide a means for permitting the expansion and contraction of such rails upon or in respect to each other?

(Same objection.)

A. I do not perceive how it could.

Q. 28. In said original patent is there any declaration, intimation or suggestion as to the use of the self-adjusting fastener described therein upon railway tracks, or of any change or variation in its structure to adapt it to such a use?

(Same objection, and further, that the patent itself is the best evidence of what it contains.)

A. The word "railway tracks," "rails," or any word referring to railway tracks or rails, is not found in the patent. So far as I can perceive, there is but one statement in reference to modifications, and this amounts to stating that in some cases the side-flanges may be made to fit up close to the studs, as seen at 1, 1, Fig. 2, and there is no statement of any change in the structure of the device to adapt it to use in connecting the rails of railway tracks.

Q. 29. Comparing the reissue patent No. 4870 (Compl't's Ex. No. 2)

with the original patent, "Def't's Exhibit Original Johnson Patent," do you find any other or different structures described in the
377 former as the invention contained therein from that described in the latter? And give your reasons for any opinion you may express.

(Same objection.)

A. I do. Thus I find in the original Johnson patent that the self-adjusting fastener described therein is one composed of the stud 2, the side-flanges 4, the bottom-plate 5, and the pin 3, passing through the stud and side-flanges.

Whereas the self-adjusting fastener as described in the reissue, as I understand the same, is only a part of the compound device described in the said original, such part comprising only the side-flanges, the bottom-plate, and the pin or bolt, as it is alternatively called in the said reissue.

If the structure recited in the second claim of the reissue be the one comprehended within the first understanding of it given by me in my answer to question 6, and consisting of the bolt or pin, the slotted side plates either detached from any bottom plate or connected in any manner, the articles or materials to be connected together, and every means of suitably connecting the adjusting bolt and slotted side-plates or their equivalents with the materials or articles to be fastened together, whether directly or indirectly, then I do not find such a structure described as the invention in the said original patent, because there is no direction, intimation or suggestion therein that the slotted side-plates are ever to be free of the bottom plate, or that the stud 2 can be dispensed with and no equivalent put in its place, or that the side-plates can be applied directly to opposite sides of one of the materials to be fastened together; all of which changes are included in the structure of the second claim of the reissue, if the said understanding of it, first stated by me, be the true one.

If the second understanding given by me in my answer to question 6, of the structure of the said second claim, be the true one, then
378 that structure amounts in substance to the combination of all the parts composing the self-adjusting fastener of the original Johnson patent (or the mechanical equivalents of the several parts, with the materials or articles to be connected); or, in other words, to the combination of the self-adjusting fastener of the original Johnson patent with the materials to be fastened or their mechanical equivalent.

In such case the structure recited in the said second claim as the invention comprehends the self-adjusting fastener of the said Johnson original patent, and the invention is no broader than the invention described in the original patent.

Q. 30. Refer to such portions of the specification of the reissue patent No. 4870, which in your opinion, describes or sets forth any different device or structure than is described in the original patent as you understand it, making also in your answer such reference to the original patent as you may deem advisable.

(Same objection.)

A. In the reissue patent I find several sentences which are not found in the original, and which, as inserted in the reissue, change the description as compared with the description in the original. These sentences are the following: That found in fol. 534 of complainants' printed record in the following words, viz: * * "And the device for connecting the same to the metal roof." * * *

The paragraph contained in fols. 535 and 536 of complainants' record, beginning with the words "In using" at the head of page 182.

The sentence in fol. 536 of complainant's record, referring to the bottom plate in the following words: "* * * used as a convenient means of attaching the side-plates to the wooden sheathing of the building."

The sentence printed in fol. 540 of complainant's record in the
379 following words: "Both the wooden sheathing and the metallic roof are thus connected to the self-adjusting mechanism, consisting of the slotted side-plates and the bolt which slides in them."

These various sentences convey to my mind the idea that the stud is not a part of the self-adjusting fastener, and that the bottom plate is used only as a convenient means of attaching the side-plates to the wooden sheathing of the building, and is therefore not an essential characteristic of the invention, in view of the broad construction of it, which may be given to the language of the patent, by reason of the bearing of the above-quoted sentences taken in connection with the paragraph printed at fol. 542 of complainant's record, and commencing with the words "I contemplate;" and the statement in this paragraph would, in my opinion, have much less scope and refer to a different invention if the several portions referred to in the first part of this answer, as inserted in the reissue, did not exist therein.

Q. 31. Please examine the patent granted to Moncure Robinson, dated March 16th, 1839 (Complainants' Exhibit Robinson Patent), and state whether you understand the same, and whether you find therein any structure or device which, in your opinion, is substantially like that described in the Complainants' Patent, Reissue 4870, as you understand that patent, and give your reasons for any opinions you may express.

A. I have examined a certified Patent Office copy of the Robinson patent referred to in the question, and believe that I understand the contents thereof, and the construction and operation of the structure therein described and represented.

Having in view the understanding of the structure recited in the 1st claim of the reissue 4870, which is given in my answer to question 5, I am of opinion that the said Robinson patent describes substantially the same structure as recited in said 1st claim; the bottom plate of the Robinson chair corresponding substantially with the bottom plate
380 5 of the said reissue; the side-plate or "shoulder" of the said Robinson chair being a mechanical equivalent for the two side-plates or flanges 4 of the said reissue; and the bolts of the said Robinson chair each being a mechanical equivalent for the bolt or pin of the said reissue in connecting the flange and bottom plate with another article, and in working in a slot or elongated hole, so as to permit movement by contraction or expansion.

In forming my opinion I took into consideration the fact that the elongated holes in which the bolt works are in the rail of the Robinson patent and not in the chair, but I do not regard this difference as material in view of the understanding of the invention referred to by me, because the elongated hole or slot exists in the one case as well as in the other, and for the same purpose, viz, to afford the requisite play for contraction and expansion.

I have also taken into consideration the fact that in the said Robinson patent one side-flange or shoulder projects upward from the bottom plate, while in the forms represented in the drawings of the said reissue there are two side-flanges projecting upward from the bottom plate; but I do not regard this difference material, because no advantage is set forth in the reissue as arising from the use of two flanges

over one; because the flanges of the reissue (as before stated by me in the course of this examination) have no essential lateral confining action upon the stud between them; and because, for the purpose of holding the bolt and permitting it to move, one flange is the equivalent of two. I am aware that if a screw-bolt be applied as described in the said Robinson patent, with the nut bearing against the rail, and the rail be worked to and fro by expansion and contraction, it is possible that the screw-nut might be slacked or slightly turned backward if a jam-nut or some other device was not applied to prevent such backward turning; but I do not consider that this fact is material,
381 because, if a screw-bolt was applied to the structure represented in the drawings of the patent in place of the riveted bolt 3, the working of the bolt to and fro by the contraction and expansion of the metal covering of the roof would cause the screw-nut to rub against the side-flange with which it would be in contact, and would be just as likely to cause the screw-nut to turn backward as the working of the rail of the Robinson patent would be to the nut of its screw-bolt to turn backward. Hence the use of two flanges in the manner represented in the drawings of the patent would not prevent the unscrewing of the nut of the screw-bolt if one should be used.

If the first understanding given by me in my answer to question 6 of the structure recited in the second claim of the said reissue be the correct one, then the structure described in the said Robinson patent contains in substance the combination or structure recited in the said second claim, for the following reasons, viz: In the said Robinson structure each of the bolts corresponds substantially with the adjusting-bolt of the said second claim; the shoulder or side-plate of the said Robinson structure is a substantial mechanical equivalent for the side-plates of the said second claim; the rail and the "cross-sill" (or longitudinal timber") of the said Robinson patent, which are combined together by the chair with its side-flange and the bolts, are the equivalents of the materials recited in the said second claim. In forming this opinion I took into consideration the fact that in the said Robinson structure the round and slotted holes for the bolts are transposed as compared with their positions in the drawing of the said reissue; but this difference is, in my opinion, immaterial, because the one position of the bolt-holes is the mechanical equivalent of the other for the purpose of permitting movement by contraction and expansion, and because it would be a simple matter of judgment which of the two positions would be used by a constructor. I have also taken into
382 consideration various other differences, which are the same as those mentioned by me in my answer to question 19 in reference to differences between the compound rail as used and the structure represented in the drawings of the patent, but consider that such differences are immaterial, for the reasons given in that answer.

If the second understanding given by me, in my answer to question 6, of the structure recited in the second claim of the said reissue be the true one, then the structure described in the said Robinson patent does not embody in substance the structure of the said second claim, because it lacks one essential feature thereof, namely, one of the means (the stud 2) for making the connection and combination described in the said reissue; and the said Robinson structure has no equivalent for such stud; in forming this opinion I take into consideration the fact that there are substantially the same differences between the Robinson rail structure and the representation of the drawings of the patent as exist between the compound rail structure and the representa-

tions of the drawings of the patent, as are stated by me in the last part of my answer to Q. 19; but I consider these differences immaterial for the reason given in that answer; I also took into consideration the fact that in the Robinson structure the round hole and the slot for the bolt are transposed, as compared with their positions as shows in the drawings of the reissue, but deem this difference immaterial for the reasons previously given in the first part of this answer.

Q. 32. State what, within your knowledge, was the state of the art prior to 1857 of the use of an elongated or slotted hole and bolt for connecting metals together, and so that they could have motion one upon the other, exclusive of railroads.

Adjourned to Friday, September 28, 1877.

383 NEW YORK, *September 28th*, 1877.

Met pursuant to adjournment.

Present, counsel for the respective parties.

Adjourned, by consent, to October 1st, 1877.

NEW YORK, *October* 1, 1877.

Met pursuant to adjournment.

Present, counsel as before.

Adjourned to October 2d, 1877, at 11 o'clock.

NEW YORK, *October* 2, 1877.

Met pursuant to adjournment.

Present, counsel as before.

(Counsel for complainants enters a further objection to questions 25 to 30, both inclusive, on the ground that they are not within the issues raised by the answer of the defendants and the numerous amendments thereto.

Counsel for defendants, in answer to such objection, states that he considers the inquiries embraced in the questions referred to in the objection as within the issues in this case made in the answer of the defendants, which was first put in by them in this case.

Counsel for complainants objects to question 32 as incompetent at this stage of the proceedings, and for the reason that no notice is given in the answer of the defendants, or of the numerous amendments
384 thereto, of the name of this witness as being one who had knowledge of an alleged prior use of the inventions described and claimed in complainants' reissued letters patent.)

Counsel desires to note upon the record the following facts, namely:

At the conclusion of complainants' testimony in rebuttal, the defendant's counsel stated his desire to call an expert, which he had theretofore omitted to do. Complainants' counsel, being desirous of affording to the defendants every opportunity of meeting the allegations set forth in the bill of complaint, if they were able, entered into a stipulation by which the defendants were enabled to call the present witness as an expert, he understanding, however, that the examination of the witness would be confined to the matters already in evidence, and that he would not be called upon to meet new matter, as is implied by the question objected to.

Counsel further says that the stipulation required the defendants to conclude this evidence by the 15th of September, and in view of the strict interpretation which defendant's counsel puts upon the stipulation referred to, complainants' counsel gives notice that he will at the

hearing of this cause move to strike out all the testimony of this witness given after the said 15th day of September.

Counsel for defendant states in reply to the last objection and statement of complainants' counsel on the record that on the taking of complainants' opening proofs in this cause no evidence was given by complainant as to what he deemed the scope of the invention described in the patent sued upon; that defendant's counsel at that time made the inquiry whether complainants intended to call any expert for the complainants in his opening proof, and that he was informed they did not; and that defendant's counsel (from such conversation supposing that the complainants did not intend to call any expert witnesses) did not, therefore, introduce any expert testimony when putting in his
385 first evidence in this cause; that complainants, after defendants had put in their testimony, having introduced and having called an expert, Mr. Eliot, as a witness, defendant's counsel considers that he ought to have the right to call an expert on behalf of the defendants in this suit, and so informed complainants' counsel; that at that time, or very shortly thereafter, a stipulation was made in this suit in and by which the defendants were to have the privilege to "examine an expert in regard to the subject-matter in controversy;" and that it was also provided in such stipulation that the testimony on the part of the defendants should be closed by September 15, 1877, and that of the complainants in reply thereto, if they put in any such rebutting testimony, should close by September 25. That this stipulation was made on the 7th of August; that defendant's counsel, at the time of making such stipulation, and for some weeks previous thereto, had been scarcely able to attend to the ordinary duties of his profession, and that at the time of making such stipulation he had made arrangements to leave his business for as long a time as he could, for the purpose of recruiting his health; that at the time the said stipulation was made he stated to complainants' counsel that it might be uncertain whether the condition of such stipulation could be complied with at the times specified, and that he understood from complainants' counsel that it was desirable to have a written stipulation as to the matter, but that the time could be extended if necessary, or words to that effect; that defendant's counsel returned to the city of New York during the early part of September for the special purpose of putting in further testimony in this cause on the part of the defendants; that he was unable to secure the services of Mr. Renwick, now being examined, owing to Mr. Renwick's other engagements, so as to put in and complete his testimony prior to the 15th day of September, 1877; that he informed complainants'
386 counsel that he could not obtain the time of his expert so as to put in his testimony within the time referred to, and that complainants' counsel informed him, defendant's counsel, that if such testimony was commenced before the 15th of September, it would be sufficient; that defendant's counsel was able to get Mr. Renwick to give a part of a day on the 14th day of September for the commencement of his examination, as appears by the record of this case, and that his examination has been proceeded with, since that time, at the times mentioned in the record with the consent of the complainants in this case; that defendant's counsel, at the time of making such stipulation referred to, did not understand that he should be permitted to examine his expert only in respect to such matters as had previously been more or less fully gone over in his testimony, or only in reply to the expert of complainants; but that he supposed and understood that he had the right to examine an expert with reference to any of the issues or mat-

ters in the case, and that it was under such an understanding that question 32 was put by him, and not otherwise; and that defendant's counsel considers question 32 as important and necessary for the interests and rights of the defendants in this suit.

Complainants' counsel maintains that the statement of defendant's counsel clearly shows that he (complainants' counsel) has acted in good faith all through, and has extended every courtesy consistent with his position to the defendant's counsel. He further states that for some time prior to the examination of Mr. Eliot, defendant's counsel was well aware of the fact that he was to be called as a witness in this suit, and if he had desired to call an expert that time complainants' counsel would have suspended the examination of Mr. Eliot to afford defendant's counsel an opportunity to call such expert. No intimation of any intention to call an expert on the part of defendants was made to complainants' counsel until the conclusion of Mr. Eliot's testimony.

387 Then defendant's counsel stated his desire to call an expert to meet Mr. Eliot's testimony, and complainants'counsel at once assented to such proposition, and entered into the stipulation referred to.

Complainants' counsel never understood that the defendant's expert was to be examined as to new matter or he would not have entered into such a stipulation, and this is manifest from this fact that the stipulation provides for the hearing of the case in October. Now it is evident that if the complainants are compelled to meet and rebut testimony as to new matters introduced by this witness, it would be impossible for them to be ready for hearing in October. Inasmuch as the counsel for defendants insists upon a literal interpretation of the words of the stipulation, and urges that his understanding as to the time in which this testimony was to be taken, counsel for complainants insists that his understanding of the scope of the examination of this witness should be accepted and this question considered not within such scope.

Defendant's counsel disclaims all intention of imputing anything on the part of complainants' counsel except good faith; and further states that he has no recollection of having stated that he wished to call an expert simply to meet the testimony of Mr. Eliot, the complainants' expert; and further states that he never supposed or understood that the stipulation referred to should be strictly and literally carried out in the times mentioned therein, and that such is still his view in respect thereto.

Defendant's counsel regrets any misunderstanding under this stipulation, and submits the answer that may be given to this question to the court with this condition: that if the court shall consider such answer as not within the spirit of said stipulation, although within the literal terms thereof, that the same may be erased.

388 Complainants' counsel joins in the regret as to the misunderstanding, but still adheres to his views in regard to the stipulation referred to, and will, in accordance with his notice, move to strike out this testimony.)

Direct examination of witness proceeded with, in answer to question 32:

A. Previous to 1857 I knew of numerous cases in which an elongated or slotted hole and bolt were employed for connecting articles of metal together, and also articles of metal to articles of wood. Thus in former days it was a common practice to form the bolt-holes in cast-iron por-

tions of machinery in the operation of casting, and to connect such portions by means of bolts passed through such bolt-holes. In such cases the bolt-holes had very frequently the form of slots or elongated holes.

Some of the instances of this kind which I may mention are the stands which contain the rolls in rolling-mills; the feet of such stands being formed with slots in them, through which were passed the bolts by means of which the stands were secured to the foundation beneath. In some of these cases which came under my notice the stands stood upon long cast-iron plates, which also contained slotted bolt-holes, and washers were applied to the bolts underneath the nuts and over the feet of the stands, so that those feet were between two plates, one on each side, the plates beneath forming one plate, and the washer above forming the other.

Another instance existed in the pillow-blocks for holding shafts which revolved; such pillow-blocks were bolted both to iron and wooden frames. The bolt-holes were frequently slots, and the bolts were passed through these slots.

Another instance existed in the guides for the saw-gates of saw-mills; such guides were, to my knowledge, frequently formed with slots for the bolts by which the guides were secured to the wooden saw-
389 frame; and in such cases it was customary to apply washers to the bolts under their nuts.

Another instance existed in lathes for turning wood and metals. In some of these the puppet-heads were formed with slots in their bases, and the bolts which secured these puppet-heads to the bed plate or shears beneath were passed through these slots. I have known cases of this kind in which the bed-plate was of cast-iron and was formed with slots for the bolts which secured the puppet-heads and tool-rests to the bed-plate.

Another instance existed in the rests for holding the tools of turning-lathes, the bases of which were frequently formed with slots for the bolts which held them to the bed or shears beneath.

Another instance existed in the mode of connecting articles to be turned with the revolving face-plates of turning-lathes; such face-plates were frequently formed with a series of slots. The article to be turned was placed against the face-plate, and was secured to it by *by* applying a perforated plate or bar to the outer side of the article, and by passing bolts through the holes of the said perforated plate or bar at either side of the article and into the slots of the face-plate. The holes in the perforated plate used in such cases were generally larger than the bolts, and frequently had the form of slots, so that the article was held between two slotted plates, by means of bolts passing through the slots of the plates. Another instance was found in slotting and planing machines, in which the movable carriage to which the article was secured was slotted, and the article was secured to it by bolts in a manner analogous to that above mentioned in reference to lathes.

Another instance was the means employed for varying the stroke of an implement moved by a revolving crank. In these cases the crank was frequently constructed to move in a slot, and was held in place by one or more screw-bolts passing through such slot.

390 It may be proper to state that in all of the above cases the use of the slotted bolt-holes was to permit the parts to be moved or adjusted relatively to each other; the idea of using the slots for the express purpose of permitting movement by expansion or contraction not entering into the views of the constructors, so far as my knowledge extends. But it is also proper to state that if movement did occur by

expansion or contraction, the construction permitted it; and also that in those cases, such as pillow-blocks, in which a metal article was secured to a wooden framework by two or more bolts passing through slots, there must have been some slight movement by reason of the difference between the expansions of metal and wood, and by reason of the swelling and contraction of the wood by moisture.

Cross-examination waived.

E. S. RENWICK.

Subscribed and sworn to before me, Kenneth G. White, ex'r, this 2d day of October, 1877.

KENNETH G. WHITE, *Ex'r.*

Defendant's Exhibit Original Johnson Patent, Sept. 24, 1877.—K. G. W., Ex'r.

The United States of America to all to whom these letters patent shall come:

Whereas Asa Johnson, of Cairo, N. Y., has alleged that he has invented a new and useful improved mode of fastening sheet metal on roofs, &c. (he having assigned his right, title, and interest in said mode to himself and William Higbie and Henry Link, of Little Falls, N. Y.), which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said mode, and that the same hath not, to the best of his knowl-
391 edge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said mode and praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to the said Asa Johnson, William Higbie & Henry Link, their heirs, administrators, or assigns, for the term of fourteen years from the nineteenth day of May, one thousand eight hundred and fifty-seven, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said mode, a description whereof is given in the words of the said Johnson in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States of America the eighty-first.

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

[SEAL.]

C. MASON,
Commissioner of Patents.

392 The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Asa Johnson, of the town of Cairo, county of Greene, and State of New York, have invented a new and useful mode

of self-adjusting fastening, for fastening metallic coverings to buildings and in any and all other places where metals require fastening, and their contraction and expansion demand accommodation; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, in which

Fig. 1, is a side elevation of a building.

Fig. 2, is an end elevation or section cut through the roof in the line x x, Fig. 1.

Fig. 3, is an end elevation of the self-adjusting fastener.

Fig. 4, is a side elevation of the same.

Fig. 5, is a plan view of the bottom plate.

In Fig. 2, 5 is the bottom plate, *s s*, screws passing through said plate into the sheeting of the roof, through which a hole is bored, or a hole may be bored where the substance is sufficiently thick, and the fastener let in from above and secured from the top side of the bottom plate.

The vertical dotted lines mark the distance that the stud is allowed to play by the contraction and expansion of the metallic covering, the screw for fastening the metallic covering to the adjustable stud 2, 7 the India-rubber cord passing through the stud, as seen at *a a*, and then through the plate 5, as seen at *g*, in Fig. 4.

In Fig. 3, 1 is the screw, 2 the stud, 4 the flanges, 5 the bottom plate, 3 the pin passing through the stud 2 and moving in the slots in the flanges 4, 4, 7, the India-rubber cord.

In Fig. 4, 7 is the screw, 2 the stud, 7 the India-rubber cord, 4 the flange, 5 the bottom plate, 3 the pin, *s s* the screws for attaching the plate to the sheeting of the roof, as seen in Fig. 2.

In Fig. 5, 2 the stud, 4 the flange, 7 the India-rubber cord, (5) the bottom plate, 2 the hole through the bottom plate for the cord to pass through.

In the operation of my invention, after sheeting the roof, if the boards do not exceed an inch in thickness, or thereabouts, I bore a hole at the point where I wish to insert the stud, about the size as seen in the vertical dotted lines in Fig 2. The holes may be made larger or smaller to allow for contraction and expansion, so that the studs can move freely in any direction required. The bottom plate is then screwed firmly to the boards by the screws *s s*, seen in Figs. 2 and 4, and the screw 1 passes through the metallic covering into the stud 2, thus firmly fastening the covering *k* to the stud, as seen in Fig. 2. It will be further seen that the cord 7 passes through the stud 2, Fig. 4, and then through the bottom plate, and is fastened together, as at *g* in said figure, thus always keeping the stud in an erect position until attached to the metal.

If the covering contract on a line parallel with the connecting-pin *s*, the adjustable connecting-stud 2 will move on it towards one of the flanges 4; when it expands, it will move towards the opposite flange, thus moving towards the point of contraction and from the point of expansion, with the metallic covering.

The adjustable stud, in addition to its parallel and longitudinal movement, is capable also of a diagonal movement, thus accommodating itself to any direction required by the metal contracting or expanding.

I contemplate using them as general fasteners where it is necessary to allow for the contraction and expansion of the material used, not confining myself to buildings only.

I may find, in using my adjustable fasteners, it necessary to

394 make some of them, those that are in the parallel lines with the flanges, to fit up close to the sides of the studs, as seen at 1, 1 in Fig. 2, allowing them to move in but one direction on the pin 3, which slides in the slots in the flanges 4 4, as seen at 6 in red ink, in Fig. 4.

Having thus fully described the construction and operation of my invention, what I claim and desire to secure by letters patent is the self-adjusting fastener, as described, for the purpose of attaching metallic covering to buildings, and accommodating itself to the contraction and expansion of the metal, and for fastening metals in any and all other places where the contraction and expansion demand accommodation, substantially as set forth, or any mechanical device equivalent thereto.

ASA JOHNSON.

Witnesses:
WM. S. HALL,
GEORGE K. COMSTOCK.

(Here follow 2 diagrams marked pages 395 & 396.)

397 *Complainants' Exhibit No. 1, June 8th 1876.—W. H. De L., Sp'l Ex'r.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissued letters patent granted Johnson and Sandford, dated April 16th, 1872, No. 4870, for "improvement in fastening sheet metals to roofs."

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this sixteenth day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[L. S.]

J. M. THACHER,
Acting Commissioner.

No. 4870.—Reissue.

The United States of America to all to whom these presents shall come:

Whereas Asa Johnson, of New York, New York, assignor of two-thirds interest to Thomas S. Sandford, has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in fastening sheet metals to roofs.

(For which letters patent were issued to Johnson, Higbie and
398 Link, dated May 19, 1857, and extended seven years from May 19, 1871, which letters having been surrendered, the same have been cancelled and new letters ordered to issue to him and said assignee on an amended specification), a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters *l*atent are to grant unto the said Johnson and Sandford, their heirs or assigns, for the term of twenty-one

years from the nineteenth day of May, one thousand eight hundred and fifty-seven, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this sixteenth day of April, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-sixth.

B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
[L. S.]

M. D. LEGGETT,
Commissioner of Patents.

4870.

UNITED STATES PATENT OFFICE.

Asa Johnson, of New York, N. Y., assignor of two-thirds interest
399 to Thomas S. Sandford. Improvement in fastening sheet-metals to roofs. Specification forming part of letters patent No. 17331, dated May 19, 1857; extended 7 years, reissue No. 4870, dated April 16, 1872.

To all whom it may concern:

Be it know' that I, Asa Johnson, of the city of New York, formerly of the town of Cairo, New York, have invented a new and useful mode of self-adjusting fastenings for fastening metallic coverings to buildings, and for use in any and all other places where metals require fastening and the contraction and expansion require accommodation; and I do hereby declare the following to be a full, clear, and exact description thereof, which will enable those skilled in the art to make and use the same, reference being had to the accompanying drawing forming a part of this specification, in which drawing—

Figure 1 is a side elevation of a building. Fig. 2 is an end elevation of a section through the roof in the line *x x*, Fig. 1. Fig. 3 is an end elevation in section of my adjustable fastening and the device for connecting the same to the metal roof detached. Fig. 4 is a side elevation of the same in section. Fig. 5 a plan view of the bottom of plate, to which the bearings of the adjusting-bolt are attached in this instance.

The principle of my invention consists in connecting the metal to be fastened with a bolt or pin arranged to slide in slotted bearings in the direction of expansion or contraction, said adjustable bolt and its bearings being combined with the materials to be fastened.

I have found my adjustable fastener peculiarly useful in fastening metallic roofs to buildings, and I proceed to describe its construction and use in that connection, from which other uses will be obvious.

400 In using my self-adjusting fastener for fastening metallic roofs to buildings I connect the sliding bolt or pin with the roof by means of a stud fastened to the same, and I form the side-plates, which contain the bearings for the sliding-bolt, in connection with and as flanges of a bottom-plate, which is secured fast to the under side of the wooden sheathing of the building.

In the drawing, 1 indicates the screws for attaching the metallic roof to the stud, 2 is the stud, 3 is the adjusting bolt or pin, to which the

metallic roof is connected by the stud and screw, said bolt passing through the stud 2 and through the slots of the side-plates or flanges. 4 4 are the side-plates or flanges, provided with slots, which form the bearings of the adjusting-bolts. 5 is a bottom-plate, used as a convenient means of attaching the side-plates to the wooden sheathing of the building. 6 6 are the slots in the side-plates in which the adjusting-bolt slides. 7 is an India-rubber cord which may be used in applying the adjustable fastener to buildings. It is connected with the stud by being passed through an opening in it. It then passes down on each side of the stud and through an opening in the bottom-plate, where it is fastened, as indicated at *g* in the drawing, and is used for keeping the stud in an erect position until after the stud has been inserted through the sheathing from below, and until it is attached to the metal roof. Without some contrivance of this kind it would be difficult in the position indicated to keep the stud in position while the connection was being made.

S S are screws for attaching the bottom-plate, and with it the side-plates, to the sheathing. G is the sheathing of the roof, greatly enlarged in thickness in proportion, to illustrate the details of
401 the connection of the adjustable fastener to buildings. H is the metallic roofing.

The method of using the invention in attaching metallic roofing to buildings is as follows: After sheathing the roof, a hole is bored in the sheathing, at the point where the adjustable fastener is to be used, of sufficient size to allow the connecting-stud to move in the same with the expansion or contraction of the metallic roof. These holes receive the slotted flanges or side-plates 4 4, and they are indicated in the drawing by the letter *a*. (See Fig. 2.) They should be of the shape and size required by the extent and direction of the contraction and expansion to be allowed for. The flanges or side-plates are inserted in the holes, and the bottom-plate is then firmly secured to the boards or sheathing G by the screws S S, as seen in Fig. 2. Where the sheathing is sufficiently thick a hole may be bored into it to receive the fastener from above. The sides-plates 4 and adjusting-bolt 3 are thus connected with the building. The connection with the metallic roof is then effected by holding the stud in an erect position by means of the rubber cord, and attaching the stud to the roofing by means of the screw 1. Both the wooden sheathing and the metallic roof are thus connected to the self-adjusting mechanism, consisting of the slotted side-plates and the bolt which slides in them.

It is obvious that if the metal of the roofing contracts or expands in a line with the slots in the side-plates that the bolt will adjust itself to such contraction or expansion by sliding in the slots in the proper direction.

On the other hand, in cases where the line of contraction or expansion may be diagonal, or at right angles to the line of the slots in the side-plates, the connecting-stud is arranged to slide upon the
402 adjusting-bolt, as it is shown it may do in Figs. 2 and 3. Where, however, the movement is only sensible in the direction of the slots, the side-plates are made to fit up close, as seen at Fig. 2 in the illustrations marked *, where the side-plates or flanges are seen in cross-section, so that the only practical adjustability shall be in the direction of the slots.

I contemplate using my invention as a general fastener where it is necessary to allow for the contraction and expansion of the material used, not confining myself to buildings only.

Having thus fully described the construction and operation of my invention, what I claim as new, and desire to secure by letters patent, is—

1. The self-adjusting fastener as described, for the purpose of attaching metallic coverings to buildings and accommodating itself to the contraction and expansion of the metal, and for fastening metals in any and all other places where the contraction and expansion demand an accommodation, substantially as set forth.

2. I claim, in combination with the adjusting-bolt and slotted side-plates, suitably connected to and combined with the materials to be fastened together for the purpose of accommodating the expansion and contraction of such materials with reference to each other, substantially as specified.

ASA JOHNSON.

Witnesses:
W. HAUFF,
E. F. KASTENHUBER.

403 *Complainants' Exhibit, Johnson Deed, No. 1.—Wm. H. DeL., sp'l ex'r.*

This indenture, made the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-four, between Ira Johnson, of Franklin, in the county of Delaware and State of New York, and Polly, his wife, of the first part, and Griswold Johnson, of the same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar (and also the natural affection I bear my son), current money of the United States, in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath bargained, sold, remised, quitclaimed, and by these presents doth bargain, sell, remise, and quitclaim, unto the said party of the second part (in his actual possession now being), and to his heirs and assigns forever, all that certain piece or parcel of land situated in the town of Franklin and county of Delaware being a part of lots Nos. 70 and 54, in a tract of land granted to Peter Van Brugh Livingston and others, and bounded as follows, viz: Beginning in the middle of the public highway, and on the line dividing the said lot No. 70 into two equal parts, and running thence along the middle of said highway to a point opposite the southerly side of the garden of the said Ira Johnson; thence south 62½° west to the southwesterly bounds of said lot No. 70; and hence southeasterly along said bounds 42 rods and three links; and thence south 62½° west to intersect a line to correspond with the rail fence at the upper end of a large pasture-lot; thence northwesterly along the said last-men-
404 tioned line to the middle of said upper end of said pasture-lot; thence south 55¼° west, through the middle of said pasture-lot, to a line dividing off 35 acres of land lying in the southwesterly corner of said lot No. 54; thence south 27½° east, along said line, being marked trees to Joseph A. Sullard's land; thence northeasterly along said Sullard's land to the said southwesterly bounds of said lot No. 70; thence northwesterly along said bounds, thirteen rods, to a stake; thence north 62½° east to the middle of said highway; thence northwesterly along the middle of said highway to a stone wall on the right-hand side of the same; thence following the course of said stone wall as far as it goes, and the same course continued to the northeasterly bounds of said lot No. 70; thence northwesterly along said to the middle dividing

line of said lot No. 70; thence south 62½° west along said dividing line to the place of beginning; together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, claim, or demand whatsoever of him, the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, and every part and parcel thereof, to the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the party of the first part hath hereunto set his hand and seal the day and year first above written.

IRA JOHNSON. [SEAL.]
POLLY JOHNSON. [SEAL.]

Signed, sealed, and delivered in presence of—
BEACH JENNINGS.

405 DELAWARE COUNTY,
Town of Franklin, ss:

On the 23d day of March, 1844, before me came Ira Johnson and Polly, his wife, known to me to be the individuals described in and who executed the within conveyance, who acknowledged that they executed the same; and the said Polly acknowledged, on a private examination apart from her husband, that she executed the said conveyance freely, and without any fear and compulsion of her husband.

WILLIAM S. NOBLE,
Justice of the Peace.

(Endorsed:)

DELAWARE COUNTY,
Clerk's Office, ss:

Recorded in liber 34 of deeds, pages 120 and 121, Nov. 20, 1849, 8 a. m.

WM. McCLAUGHRY, *Clerk.*

Complainants' Exhibit Johnson Deed No. 2.—W. H. De L., sp'l ex'r.

This indenture, made the 27th day of November, in the year of our Lord one thousand eight hundred and forty-five, between Asa Johnson, of the town of Franklin, in the county of Delaware and State of New York, of the first part, and Griswold Johnson, of the town, county, and State as aforesaid, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five hundred dollars, lawful money, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted,
406 bargained, sold, remised, released, aliened, and confirmed, and by these presents doth grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, in his actual possession now being, and to his heirs and assigns forever, all that certain piece or parcel of land situated in the town of Franklin and county of Delaware being a part of lot No. 70 and 54, in a tract of land granted to Peter Van Brugh Livingston and others, and bounded as follows, viz: Beginning at the southeasterly corner of said lot No. 70, and running thence southwesterly along the bounds of the same to the south-

westerly corner of said lot; thence northwesterly along the bounds of said lot 38 rods; thence north 62½° east to the middle of the highway; thence northwesterly along the middle of said highway to a stone wall on the right-hand side; thence along the course of said wall as far as it goes, and the same course continued to the northeasterly bounds of said lot; thence southeasterly along said bounds to the place of beginning (excepting and reserving out of said premises about one and a fourth acre of land, sold to Isaac Ford); and I do further convey as aforesaid one other piece of land, situated in said lots No. 70 and 54, beginning in the middle of the highway and on the line dividing said lot No. 70 into two equal parts, and running thence southwesterly to the southwesterly corner of ten acres of land owned by Solomon Teed; thence northwesterly along the line of said Teed to the highway leading to Caro Creek; thence southwesterly along said road to the easterly line of a 35-acre piece of land situated in the southwesterly corner of said lot No. 54; thence southeasterly along said eastern line to a stake standing for the middle of a large pasture-lot; thence north 55¼° east,
407 along the middle of said pasture, to the rail fence at the upper end; and thence southeasterly along said rail fence to the first stake; thence north 62½° east to the southwesterly bounds of said lot No. 70; thence northwesterly along said bounds 14 rods and 19 links; thence north 62½° east through the middle of the barn floor, &c., to the highway; thence northwesterly along said highway to the place of beginning; together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said tracts of land and premises to the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for his heirs executors, and administrators, doth covenant, grant, bargain, promise, and agree to and with the said party of the second part, his heirs and assigns, the above-bargained premises, and every part and parcel thereof, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part of the said premises, will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ASA JOHNSON. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM S. NOBLE.

408 STATE OF NEW YORK,
Delaware County, ss:

On the 27th day of November, 1845, before me came Asa Johnson, known to me to be the individual described in and who executed the within conveyance, who acknowledged that he executed the same.

WILLIAM S. NOBLE,
Justice of the Peace.

(Endorsed:)

DELAWARE COUNRY,
Clerk's Office, ss:

Recorded in liber No. 34 of deeds, pages 122 and 123, Nov. 20, 1849, 8 a. m.

WM. McCLAUGHRY, *Clerk.*

Complainants' Exhibit Crasper Deed to Asa Johnson.—W. H. De L., sp'l ex'r.

This indenture, made the second day of April, in the year of our Lord one thousand eight hundred and forty-seven, between Frederick Crapser, of Cairo, Greene Co., N. Y., and Agness, his wife, of the first part, and Asa Johnson, of the town and State aforesaid, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand dollars, money of account of the United States, to the said parties of the first part by the said party of the second part in hand well and truly paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents, do grant, bargain, sell, release, and
409 confirm, unto the said party of the second part, in his actual possession now being, and to his heirs and assigns forever, all that certain farm or parcel of land situate in the town of Cairo, county and State aforesaid, being part of lot No. 45, Van Bergen patent, and bounded as follows: Commencing at the southwest corner of said lot, it being a corner of Marse's lot, and in the line of Cyrenus Lennon's land, the line runs thence north thirty-nine degrees east, sixty-three chains along Morse's and H. Owen's line, north to the turnpike, as it run in A. D. eighteen hundred and three; then along said turnpike, as it then run, eastward to the corner of a lot formerly owned by Mary Upham; then along the line of said lot south thirty-nine degrees west, twenty-one chains and ninety links, to a stake and stones; thence south fifty-one degrees east, six chains, to the line of lands occupied by Clark; then along the line of said land till it corners to a lot of land formerly owned by aforesaid Mary Upham; then north fifty-one degrees west, six chains, to a stake and stones; then along the line of said land south thirty-nine degrees west, thirteen chains and thirty-four links, to another corner of said land; then south fifty-one degrees east, six chains, to the line of said Clark's land; then along said line south thirty-nine degrees west to the line of Cyrenus Lennon's land; then by his line north fifty-two degrees west, thirteen chains and fourteen links, to the place of beginning, containing sixty-one acres of land, more or less, excepting and reserving one-half of an acre of land on the northeast corner of said lot, the same purchased by William DuBois, and having a blacksmith's shop thereon; together with all and singular the privileges, advantages, hereditaments, and appurtenances to the same premises belonging or in anywise appertaining; and the reversion and reversions,
410 remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, claim, or demand whatsoever, as well at law as in, equity, of them, the said parties of the first part, or either of them, of, in, or to the same, every or any part or parcel thereof; to have and to hold the above granted, bargained, and released premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use of the said party of the second part, heirs and assigns forever. And the said parties of the first part, for their heirs, executors, and admin-

istrators, do by these presents covenant, promise, grant, and agree to and with the said party of the second part, his heirs and assigns, in manner and form following, that is to say: That they, the said parties of the first part, at the time of the ensealing and delivery of these presents, are lawfully seized in their own right of, in, and to the said premises mentioned to be hereby granted and released, with the appurtenances, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee-simple, without any condition or other matter or thing whatsoever to alter, change, charge, defeat, or make void the same. And also that they, the said parties of the first part, have in themselves good right, full power, and lawful authority to grant, bargain, sell, release, and assure the said premises hereby mentioned to be granted and released unto and to the use of the said party of the second part, his heirs and assigns, in manner aforesaid. And, further, the said party of the second part, his heirs and assigns, shall and may from time to time, at all times forever hereafter peaceably, and quietly have, hold, occupy, possess, and enjoy the said premises mentioned to be hereby granted and released, with the appurtenances; and that free and clear and freely acquitted, exonerated, and discharged of, from, and against all
411 and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, dowers and titles of dowers, judgments, executions, charges, and incumbrances whatsoever. And the said parties of the first part, for themselves and their heirs, all and singular the premises mentioned to be hereby granted and released, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend by these presents. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

FREDERICK CRAPSER. [L. S.]

her
AGNESS + CRAPSER. [L. S.]
mark.

Sealed and delivered in the presence of—
WM. TELFAIR G.

STATE OF NEW YORK,
Greene County, ss:

On the 22nd day of April, 1847, before me came Frederick Crapser and Agness, his wife, known to me to be the individuals described in and who executed the within conveyance, who acknowledged that they executed the same; and the said Agness, upon a private examination apart from her husband, acknowledged that she executed the said conveyance freely and without any fear or compulsion of her husband.

[L. S.] WILLIAM TELFAIR G,
Justice of the Peace.

J. VAN ORDEN, *Clk.*

Recorded March 13th, 1854, at 3 h. p. m.

412 STATE OF NEW YORK,
Greene County, Clerk's Office, ss:

I do hereby certify that I have compared the foregoing copy of a deed recorded in book No. 48 of deeds, page 423, with the original record in this office, and that the same is a correct transcript therefrom and of the whole of said original record.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 24th day of May, A. D. 1877.

[L. S.] O. V. SAGE, *Clerk.*

Complainants' Exhibit Johnson's Application.— W. H. De L. sp'l ex'r.

Department of the Interior, U. S. Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file-wrapper and contents in the matter of letters patent granted Asa Johnson, asso'r to Johnson, Link and Higbie, dated May 19th, 1857, No. 17331, for improved mode of fastening sheet-metal on roofs, &c.

In testimony whereof I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[L. S.] W. H. DOOLITTLE,
Acting Commissioner.

413 14 ho. PATENT OFFICE, *March* 1, '57.

SIR: Y'r appl'n for lett's pat. for improved fastening for "metallic roofing" cannot be examined in its present form, as it contains several distinct alleged inventions, which ought to be embraced in separate applications. Y'r spec'n & one dr. are therefore returned that you may elect which claim you will retain, and erase the others.

Very respectf.,

ASA JOHNSON, Esqr.,
Cairo, New York.

(Endorsed:) Office letter to Asa Johnson, March 14, '57. M. B. A. H. Spec'r & dr. ret.

HERKIMER COUNTY, STATE OF NEW YORK,
Little Falls, March 2, 1857.

Hon. C. MASON,
Commissioner of Patents, Washington:

MY DEAR SIR: Enclosed I remit to you the sum required to accompany my application for letters patent on my improved self-adjusting fastenings & metal'ic covering for buildings, together with specifications, drawings, & petition for the same & model. I wish you would have the kindness to inform me when you will be ready to examine the
414 same, as I should be glad to be present at the examination, & explain its parts if ne'ssary. By so informing me you will greatly oblidge.

I remain, yours, truly,

ASA JOHNSON.

(Endorsed:) Rec'd & filed Mar. 9, 1857. A. S. G. Model & 2 draw. & $30, gold.

To the Commissioner of Patents:

The petition of Asa Johnson, of the town of Cairo, in the county of Green and State of New York, respectfully represents:

That your petitioner has invented a new and useful improved self-adjusting fastening for connecting metallick covering to buildings and to accommodate its contractions and expansions, together with metal'ick seyment-formed pilasters, entablature, or cornice, seyment-formed hollow ridge-moulding, e've and end troughs, so formed to act in combination with the self-adjusting fasteners to accommodate contraction and expansion, which he verily believes has not been known or used prior to the invention thereof by your petitioner.

He therefore prays that letters patent of the United States may be granted to him therefore, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty dollars into the Treasury, and complied with the other provisions of the said act.

ASA JOHNSON,
WM. HIGBIE, &
HENRY LINK, *Assigns.*
ASA JOHNSON.

415 The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Asa Johnson, of the town of Cairo, county of Green, and State of New York, have invented a new & useful improvement in self-adjusting fastenings for fastening metal'ic covering to buildings, by so constructing and forming self-adjusting fast'ners, in combination with centre permanent fastenings and metal'ic segment-formed hollow pilasters, entablatures, or cornice, e've and end troughs, metal'ic segment-formed hollow metal'ic ridge-moulding, descending from the ridge to the bottom of entablature or cornice, there closed with India-rubber ball, to connect metal'ic covering to buildings and accommodate its contraction and expansion, and in any and all places where mettels require fastening and their contraction and expansion demand accommodation; and I do hereby declare that the following is a full, clear, & exact description of the same, reference being had to the accompanying drawings forming part of this specification, in which figure 1 is a front side elevation showing front water-table front of metal'ic segment-formed hollow pilasters and water-conductors at each corner, de'cending from the troughs inside of the segment pilasters, these pilasters uniting the side and ends so formed to spring and accommodate the contraction and expansion at those points. And, further, is shown front of entablature or cornice, front of e've & end troughs, segment in form, to act yielding and expanding at those points, uniting the roofing and siding; these forms *[to] are given to accommodate the contraction and expansion of the metal'ic covering. Also in this figure is shown the front of metal'ic segment-formed hollow ridge-moulding for the double
416 purpose of a valuable finish, and to yield its spring at this point to accommodate the expansive and contractive movements of the mettle and uniting the sides of the roof. Also is shown the centre screw, that firmly fastens the centre. And the location of the self-adjusting fast'ners at the ends of the intersect-

Cancelled.

* Erased.

ing lines show in what direction and manner the self-adjusting fast'ners move to & from the centre; as their outer ends are secured to the metal'ic covering firmly, and those fast'nings move to and from the centre, each in its line terminating in the centre, as it is clear that at the centre of any section of any shaped sheet of metal there is neither contraction or expansion. This justifies permanent fast'ning at the centre.

Figure 2 is an end elevation showing water-table corner metal'ic segment-formed hollow pilasters, water-conducters de'cending from the troughs of the same form, precisely for the same objects before stated. And also is shown in this figure the entablature or cornice and bottom of end segment troughs shown broken by the dotted lines that cross the entablature or cornice at right angles, to show the self-adjusting fastenings in the position they occupy when in the roof or side of the building.

The screws are shown in them to show*n* the manner of their connection with the roof boarding or sheeting of the building.

The screw in the upper end shows the metal'ic roofing screwed to their upper ends, thus causing them to move with the contraction or expansing of metal'ic covering.

The dotted lines also that cross the entablature or cornice show the size of the hole ne'ssary to make in the roof boarding to admit the holder and fix the distance. The self-adjusting holders may move. Yet the size of the holders may be varied to accom-
417 modate any required distance of contraction or expansion.

In this *this* figure is shown the self-adjusting fast'ner connected to the roof-boards with screws, the metal'ic covering connected to it, and its own connection; further is shown the end of the metal'ic segment-formed hollow ridge-moulding de'cending from the ridge to the bottom of the entablature or cornice, its end secured by India-rubber balls, to close its end and in such a manner as to admit of its contraction and expansion, produced by its spring, which is produced by the contraction and expansion of the entablature or cornice roofing and siding which it unites.

Figure 3 is an end elevation of the self-adjusting fast'ner, showing portion of its construction and operation. Similar figures denote the same parts: 1, screw-fast'ning metal'ic covering to up'er end of adjustable connecting-stud; 2, adjustable connecting-stud, being pierced with a hole at its lower end to receive the connecting-pin 3, here shown in flanges 4 4, rising from bottom-plate 5; the adjust*i*able connecting-stud 2, embracing connecting-pin 3, standing on its centre, is free to move to either one of the flanges 4 4.

The metal'ic covering being connected to its upper end by screw 1, if the covering contract on a line parallel to the connecting-pin 3, the adjust*i*able connecting-stud 2 will move *[with]$^{\text{on}}_{\wedge}$ it towards one of the flanges 4 4; when it expands it will move towards the opposite flange; thus moving towards the point of contraction and from the point of expansion with the metal'ic covering. Also in this figure is shown a portion of the India-rubber *ch*ord 7, the office of which is to hold the self-adjusting stud 2 erect to facilitate connecting the covering, as is shown the *ch*ord secured at 9, bottom *of* plate 5.

418 Figure 4 is a side elevation of the self-adjusting fast'ner,

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showing parts of its construction and opperation. Similar figures denote the same parts: 1, screw; 2, adjustable connecting-stud; 4, the side of one of the flanges 4 4, rising from bottom-plate 5, slotted at 6 to receive connecting-pin 3, shown standing in centre of slott 6, in figure 4, its corresponding flanges, 4, with its slott, 6, being concealed from view in figure 4, but exactly corresponding with the one shown in construction and opperation shown in figure 4; thus the inner end of the adjustable connecting stud 2, embracing connecting-pin 3, which being embraced in slott 6 6, in flanges 4 4, that rise from bottom-plate (five) 5, and are united to it, connecting the several parts as the India-rubber chord 7 is shown in the hole pierced in the centre of bottom-plate 5, at 9, there secured, and the screws shown at 8 unite bottom-plate (five) 5 to side or roof of building or any other place. Now, as the in'er end of adjustable stud 2 embraces the connecting-pin 3, which is embraced and is free to *[to] move in slott 6 6, in flanges 4 4, its end shown in figure 4, standing in the centre of slott 6, in flange 4, its corresponding flange and slott concealed in Fig. 4, but exactly corresponding with the one shown, the outer end of the adjustable connecting-stud 2, being connected to the metal'ic covering by 1, screw.

The metal'ic covering in contracting to its centre will move the connecting-pin 3 towards one end of slott 6 6, & in expanding from its centre toward the opposite ends of the slotts.

Thus the movement of connecting-pin 3 in slott 6 6 are direct at right angles with the movement of the inner end of adjustable connecting-stud 2 on connecting-pin 3, as shown in figure 3.

419 Thus showing in figures 3 & 4 the capability of the adjustable connecting-stud 2 to move diagonally to and from with the contraction and expansion of the metal'ic covering to which it is attached.

The movement required *[at] in Fig. 1.

Figure 5 is a plan showing parts of construction and opperation of self-adjusting fast'ner: 5, bottom-plate pierced at its centre to receive India-rubber chord shown secured at 9, in Figs. 3 & 4; 10, holes to receive screws 8, to connect bottom-plate 5 to roof boarding or sheathing, or elsewhere, 4 4, tops of flanges [in which is the slotts] rising from bottom-plate 5, in which is the slotts 6 6 to receive the connecting-pin 3, and for it to move in and to connect it to adjustable connecting-stud 2; 7, parts of India-rubber chord; 3, connecting-pin.

This being substantially the construction and opperation and connection of the self-adjusting fast'ners for securing metal'ic covering to building and elsewhere, and accommodate it to contract & expand.

Figure 6 is a plan showing metal'ic covering at its outer lines, flanged at its ends and groves, in the corner boards, for the flanges to move in when the metal'ic covering contracts and expands.

The metal'ic covering is shown contracted. Similar characters denote the same parts: *m*, metal'ic covering, fastened precisely as shown in figures 1 & 2; V, gro'ves indicated in corner boards to admit the flanges on ends of *m*, to move in as it expands and contracts; W, corner boards to be recorded with figure (6).

The metal'ic covering may be put together by being
420 locked the same as common stove-pipes, with a strip of India

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*Erased.

rubber placed in the lock or joint, & then riveted to make it water-tight joint, or it may be soldered to make it tight, or the metal'ic covering may be riveted together with a strip of rubber between, without the lock.

The iron or metal'ic covering ought to be prepared by being boiled in linseed oil or some bituminous oil. It then may be japanned by putting bytuminous tar & asphaltum upon the same.

The same may be sanded & paint' any collor desired, to imitate brick, marble, freestone, or anything else that may be desired.

This makes a cheap and desirable covering, & at a less cost than any other material.

The segment-formed hollow pilasters, e've & end troughs, cornice, &c., are formed by passing though a machine which I have invented & am about to apply for letters patent.

This being a method I have anticipated covering buildings.

Figure 7 is a plan, but rather to show the ends of the metal'ic segment-formed hollow corner pilasters C to accommodate the contraction and expansion, in combination with the self-adjusting fast'ners attached to sides and ends, substantially as shown in figures 1 & 2, and set forth at roof H. Each side and end of the metal'ic covering is fastened at their respective centres, and to them must the sides and ends contract. By this contraction the in'er edge, or the metal'ic segment-formed hollow pilasters C, recede from each other at right angles, producing spring in the segments C as the sides and ends expand from their centres. The in'er edges of segment C move towards each other, closing up the segment C from spring produced in them. They are capable of springing in these segment forms. In this manner does all the segment forms shown and set forth in the drawings combine with the self-
421 adjusting fast'ners to accommodate the contraction & expansion of metal'ic covering to buildings. And in combination with the centre screws or fast'nings, one being shown in figure 1, at S. L., to connect metal'ic covering to buildings, as fully shown & set forth.

The nature of my invention consists in so forming and constructing self-adjusting fasteners and centre screw or fastening as to connect metal'ic covering to buildings in such a manner as to accommodate the contraction and expansion of the covering without either damage to itself or its fasteners. At the centre of each side, end section, or panel of mettal appears a strong screw, firmly fast-'ning the mettal at that point, as at the centre there is neither contraction or expansion, it being the centre of expansion; and in so forming, constructing, and arranging metal'ic covering, in combination with the self-adjusting fast'ners and centre permanent fast'ning, as to connect & secure metal'ic covering to buildings, & yet permit the covering to move to & from its several centres of contraction and expansion, on sides, ends, or roof to which it is or may be connected, in combination with metal'ic segment-formed hollow pilasters. Springing in these segments, to accommodate contraction & expansion of sides & ends, *[entablature or cornice] metal'ic segment-formed hollow entablatures or cornice connecting sides, ends, & roof by uniting metal'ic segment-formed end & e've troughs, in combination with metal'ic segment-formed hollow ridge-moulding descending from the ridge to the bottom of entablatures or cornice. The ends being closed with an India-rub-

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*Erased.

ber ball, all yielding their segment springs in their segment forms, producing a yielding easy spring to operate in combination with the self-adjusting fast'ners to accommodate the contraction the
422 & expansion of ∧ metal'ic covering. And with the centre screws connect it to the building, as will be set forth.

The following description and annexed drawing fully sets forth the detail of construction & opperation.

The several parts are thus represented:

A, water-table, uniting to the side of the building in an angular form & with the basis of corner pilasters; C, B, sides of building *[H,] covered with metal substantially as shown and detailed in connecting the metal'ic covering to the roof H and C; corner metal'ic segment-formed hollow pilasters so formed as to spring easily to assist expansion & contraction of the metal'ic covering and uniting the sides and ends of the metal'ic covering of the building *[of the building].

The inner edges of the segment pilasters, C, . Receding from each other at right angles when the metal'ic covering contracts and approaching each other when it expands, connecting with entablature or cornice, E and G G.

D, water-conductors descending from the eave-troughs F, inside of pilasters C. E, front entablature or cornice shown in figure 1. Metal'ic hollow segment formed springing in its segment to accommodate the contraction and expansion of the side B and roof H, which it unites by uniting with the eave and end troughs F. Being segment formed and uniting with roof; theis segments serve the double purpose of yielding their segment springs to assist in accommodating contraction & expansion, and receive the water and conduct it to the conducters D.

I, metal'ic segment-formed hollow ridge-moulding for the sit
423 purpose of uniting the two opposides sides of the roof, H. ∧

It's formed to yield its segment spring, at this point accommodating the expansion and contraction of the metal'ic covering and acting in combination with the self-adjusting fast'ners, both in accommodating contraction and expansion and connecting the covering to the building and serves as a valuable finish.

J, end water-table, *[in] uniting with end covering angularly and the basis of pilasters C. K, end metal'ic covering united to side B, by pilasters, C, and end entablatures or cornice, G G; end entablature or cornice uniting front entablature or cornice E, and end troughs F which are connected with the end of roof H formed precisely like the before-described front entablature and for the operating
same purpose and ∧ substantially the same. N, portion of metal'ic segment-formed hollow ridge-moulding descending from the ridge to the bottom of entablature or cornice, uniting them and producing its spring to accommodate the contraction and expansion of the entablature or cornice G G. O, India-rubber ball clossing the ends of N, admmitting it to contract and expand and at all times remain tight, S.

Dotted line crossing the entablature or cornice G G at right angles representing where the hole in the roof boarding are to re-

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*Erased.

ceive the flanges 4 4 of the self-adjusting fast'er. The self-adjusting fast'ner, shown in figure 2, with the screws in them, showing the manner they are secured to the roof boards, or sheathing of the building, thus connecting them to the building. *i, i,* self-adjusting fast'ners shown, located in figure 1, at each end of horizontal centre line *x x*, one of these fast'nings being shown in figure 2, as it stands when in the roof. It will be seen that the flanges 4 4 come in contact with the in'er end of connecting adjustable stud 2, compelling it to move horizontally between the flanges 4 4.

424 The other being concealed in figure 2, but exactly corresponding in constr*a*ction and operation with that shown *[in figure 1]. Its location shown in figure 1.

J J, self-adjusting fast'ners are formed precisely as the fast'ner *i*, shown in figure 2, and moves in the direction of lines *y y*, in the same manner to & from the centre for the same purpose that the fast'ners *i i* do, namely, for the purpose of accommodating the metallic*k* covering to contract to and from its centre as it must to its centre contract & form its centre expand in the direction of lines *x x* and *y y*.

The outer ends of the adjustable connecting-studs 2, secured by screws 1 firmly to the metal'ic covering. They are moved by the contraction and expansion of the covering in the direction of lines *x x* and *y y*, at right angles from L, the flanges 4 4 not admitting. The adjustable connecting-studs 2, in *i i* and J J to move in but one direction for the purpose of holding separate sections of metal'ic covering in the required position where they may be desired to be used. K K K K, location of self-adjusting fast'ners at the ends of the lines *z z z z;* in figure 1 ∧ construction and operation of these fast'ners are shown and set forth in figures 3, 4, & 5, two of them being shown in figure 2, standing in their required position in the roof or siding, their office being to secure the metallick covering to the building and accommodate its contraction and expansion in combination with the centre screw L *[wit] and the self-adjusting fast'ners *i i* & J J, the bottom-plate 5 being secured to the roof boards, and them perforated at *s s s s s s s s s s s s* to receive the flanges 4 4, rising from plate 5, in which is the slot*t*s 6 6, that embraces the connecting-pins 3, which is shown standing in the centre of slot*t*s 6 6, in figure 4.

425 The other slot*t* being concealed, but corresponding to that shown.

These slot*t*s 6 6, embracing connecting-pin 3, being free to move to or from either end of slot*t*s 6 6, connecting-pins 3 being embraced by the inner ends of adjustable connecting-stud 2, which move freely on connecting-pins 3, from either one of the flanges 4 4 to the other.

This movement being at right angles with the movement of connecting-pin 3, in slot*t*s 6 6, establishing the diagonal movements of the adjustable connecting-stud 2, in bottom plate 5, in slot*t*s 6 6, in flanges 4 4, as plate 5, are connected to the buildings by

Cancelled.

*Erased.

screws 8, and the $\frac{\text{outer}}{1}$ ends of studs 2 are connected to the metal'ick covering by screws (one), *[moving to and from the centre] at K K K K. Moveing to and from the centre in the lines indicated by *z z z z* by the contraction and expansion, as they are connected to the metallick covering and must move with it, thus are they made in combination with the self-adjusting fast'ners *i i* and J J, and the centre screw *L* L, to connect the metallick covering to the building, yet leaving it free to expand or contract to and from its centre, *L* L. L, centre screw to be used at centres. As a permanent fast'ning, as at the centre, is neither contraction or expansion, consequently all sides, ends, sections, or panels are to be connected to the building as shown in Figure 1, roof H, as each end side or roof of building has their independant centre of expansion and contraction.

The effect of this combination is obvious; the scope of this invention being the means by which the result is effected.

I claim the self-adjusting fast'ner, in the manner & for the
426 purpose of connecting metal'ice covering to buildings, accommodating its contraction and expansion, and for fast'ning metals in any & all other places where the contraction and expansion demands accommodation, substantially as shown and set forth in Figures 3, 4, & (five) 5, or any mechanical device equivalent thereto.

I claim, in combinations with self-adjusting fast'ner, the manner of connecting them to the building, and *[of] the manner of connecting its adjustable connecting-studs 2 to the metal'ic covering, in combination with centre screws "*L* L" shown in Figure 1.

And the metal'ic segment-formed hollow pilasters C, uniting side B with end K. Uniting segment-formed hollow entablature or cornice E and G G with metal'ic segment-formed eave and end troughs F, uniting side and end edges of roof H, and metal'ic segment-formed hollow ridge moulding I, which unites the two opposite sides of roof H, and de'cends to bottom of entablature or cornice uniting the entablature or cornice G G at N, and closed at O, with an India-rubber ball to connect the entire metal'ic covering to the building, and the segment so formed that, in combination with the self-adjusting fast'ners accommodating the contraction and expansion of the covering and parts connected therewith, or mechanical devices or forms equivalent thereto, substantially as shown & set forth in this specification.

Cancelled.

Cancelled.

ASA JOHNSON.

Witnesses:
WM. T. HALL,
GEORGE K. COMSTOCK.

WM. HIGBEE,
HENRY LINK,
ASA JOHNSON,
Assignees.

(Endorsed:) Rec'd & filed Mar. 9th, 1857. A. S. G.

427 TOWN OF LITTLE FALLS,
County of Herkimer, State of New York, ss:

On this 28th day of February, A. D. 1857, before the subscriber, a justice of the peace in & for the county aforesaid, appeared the within-

*Erased.

named Asa Johnson, and made solemn oath that he verily believes himself to be the original and first inventor of the mode herein described for connecting metal'ic covering to buildings, and so forming it as to accommodate its contraction and expansion, & that he does not know or believe the same was ever before known or used, and that he is a citizen of the United States.

(Signed) CHRISTOPHER SMITH,
Justice of the Peace of Herkimer County.

Specification A.

To all whom it may concern:

Be it known that I, Asa Johnson, of the town of Cairo, *[and] county of Green, and State of New York, have invented a new and useful mode of self-adjusting fastenings, for fastening metal'ic coverings to buildings, and in any and all other places where metals require fastening, and their contraction and expansion demand accommodation; and I do hereby declare that the following is a full, clear, and exact discription of the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon:

In which Fig. 1 is a side elevation of a building.

Fig. 2 is an end elevation or section cut through the roof in the line *x x*, Fig. 1.

Fig. 3 is an end elevation of the self-adjusting fastener.

Fig. 4 is a side elevation of the same.

428 Fig. 5 is a plan view of the bottom-plate.

In Fig. 2–5 is the bottom-plate, *s s*, screws passing through said through which a hole is bored,
plate into the sheeting of the roof, ∧ or a hole may be bored where the substance is sufficiently thick, and *[there] the fastener *[is] let in from above, and secured from the top side of the bottom plate.

The vertical dotted lines mark the distance that the stud is allowed to play by the contraction and expansion of the metal'ic covering; 1, the screw for fastening the metal'ic covering to the adjustable stud 2; 7, the Indio-rubber cord passing through the stud, as seen at (*a a*), and then through the plate 5, as seen at *g*, in Fig. 4.

In Fig. 3, 1 is the screw, 2 the stud, 4 the flanges, 5 the bottom-plate, 3 the pin passing through the stud 2, and moving in the slot in the flanges 4 4, 7 the India-rubber cord.

In Fig. 4, 1 is the screw, 2 the stud, 7 the India-rubber cord, 4 the flange, 5 the bottom-plate, 3 the pin, *s s* the screws for attaching the plate to the sheeting of the roof, as seen in Fig. 2.

In Fig. 5, 2 the stud, 4 the flange, 7 the India-rubber cord, (*s*) the bottom-plates, 2 the hole through the bottom-plate for the cord to pass through.

In the operation of my invention, after sheeting the roof, if the boards do not exceed an inch in thickness or thereabouts, I bore a hole at the point when I wish to insert the stud, about the size as seen in vertical dotted lines in Fig. 2. The holes may be made larger or smaller, to allow for contraction and expansion, so that the studs can move freely in any direction required; the bottom-plate is then screwed firmly to the boards by the screws (*s s*), seen in Fig. 2 and 4, and the screw 1 passes through the metal'ic covering into the stud 2, thus firmly
429 fastening the covering K to the stud, as seen in Fig. 2. It will

*Erased.

be further seen that the cord 7 passes through the stud 2, Fig. 4, and then through the bottom-plate, and is fastened together as at *g*, in said fig., thus always keeping the stud in an erect position until attached to the metal.

If the covering contract, on a line paral'el with the connecting pin *S*, the adjustable connecting stud 2 will move on it towards one of the flanges 4; when it expands, it will move towards the opposit' flange; thus moving towards the point of contraction and from the point of expansion with the metal'ic covering.

The adjustable stud, in addition to its paral'el and longitudinal movement, is capable also of a diagonal movement, thus accommodating itself to any direction required by the metal contracting or expanding.

I contemplate using them as general fasteners, where it is necessary to allow for the contraction and expansion of the material used, not confining myself to buildings only.

I may find in using my adjustable fasteners it necessary to make some of them, those that are *[not] in the paral'el lines, with the flanges to fit up close to the sides of the studs, as seen at 1 1, in Fig. 2, allowing them to move in but one direction on the pin. *[S] 3 which slides *[are also] in the slots in the flanges 4 4, as seen at 6, in red ink, in Fig. 4.

Having thus fully described *[my] the construction and operation of my invention, what I claim and desire to secure by letters patent, is—

The self-adjusting fastener as described for the purpose of attaching metal'ic coverings to buildings and accomodating itself to the contraction and expansion of the metal, and for fastenings metals in any
430 *[may] and all other places where the contraction and expansion demand accommodation, substantially as set forth, or any mechanical device equivalent thereto.

ASA. JOHNSON.

(Endorsed:) Asa Johnson. Amended specification. Rec. April 24th, '57.

WASHINGTON, *April 24th*, 1877.

To the Commissioner of Patents:

SIR: I herewith return my papers, amended to correspond with the wishes of the office.

I amend by canceling all of the original specification except the signatures, and ask to substitute the specification herewith submitted and marked A.

I have also amended the drawings by adding additional letters and figures to make it correspond with the description, but no additional matter has been introduced.

Hoping this will be satisfactory, I remain respectfully,

ASA JOHNSON.

(Endorsed:) Asa Johnson. April 24, '57. Amendment. Rec. Apr. 24, '57. E. K. C.

431 X X

93

Herbert. 52

No. 17,331.

22

Asa Johnson,

ass'or to Johnson, Link &

*Erased

Higbie,
Of Cairo,
County of Green,
State of New York.

FASTENING METALLIC ROOFING.

Rec'd,	March 9th, 1857.		
Petition,	"	"	"
Affidavit,	"	"	"
Specification,	"	"	"
2 drawings,	"	"	"
Model,	"	"	"
Cert. dep.			

1. Cash, $30, Mar. 9th, 1857.
Examined May 2nd, '57, A. Herbert.
2. Issue Shugert, May 4, 1857.
3. Patented, May 19, 1876, X
Recorded vol. 77, page 486.
R On
1½

Spec. & dr. ret. March 14, '57.

Ex'd L. P. H.

(Endorsed:) Imp'd mode of fastenings sheet-metal on roofs, &c.

(Here follows diagram marked page 432.)

432, 433 *Complainants' Exhibit Robinson Patent—W. H. De L., sp'l ex'r.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certifiy that the annexed is a true copy from the records of this office of the letters patent granted Moncure Robinson, dated March 16th, 1839, No. 1105, for "improvement in the mode of constructing the chairs of railroads and attaching the rails thereto."

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[L. S.]

J. M. THACHER,
Acting Commissioner.

No. 1105.

The United States of America to all to whom these letters patent shall come:

Whereas Moncure Robinson, Philadelphia, Penn., has alleged that he has invented a new and useful improvement in the mode of constructing the chairs of railroads, and attaching the rails thereto, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily

434 believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Moncure Robinson, his heirs, administrators, or assigns, for the term of fourteen years from the sixteenth day of March, one thousand eight hundred and thirty-nine, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said improvement, a description whereof is given, in the words of the said Moncure Robinson, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this sixteenth day of March, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States of America the sixty-third.

JOHN FORSYTH,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.
HENRY L. ELLSWORTH,
Commissioner of Patents.

435 The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that I, Moncure Robinson, of the city of Philadelphia and State of Pennsylvania, have invented a new and improved plan of securing rails in their chairs on railroads; and I do hereby declare that the following is a full and exact description of the same:

The nature of my invention consists in providing a chair (which having been adopted by me on the Philadelphia and Reading Railroad, has been therefore termed the Reading chair) having a shoulder on one side only, with holes or openings to receive screw-bolts, which are to pass also through similar holes or openings in the ends of the rails, the holes or openings in the rails being sufficiently long to afford the requisite play for expansion and contraction of the rails in all changes of temperature.

The accompany drawing will enable others to understand and make use of my invention.

This exhibits the end of a rail in its place in the chair, with the opening A in the rail placed opposite a corresponding opening in the chair; a second opening, B, is seen in the chair, opposite which an opening in the end of the next rail would come when placed. Through these holes in the chair and rails the screw-bolts C are passed, secured by the screw-nuts D, and both the chair and rails may be secured to a cross-sill or longitudinal timber if the rail has a bottom web by the clamp-spikes marked E, or any other mode of securing the chair to the cross-sill or longitudinal timber may be adopted.

The advantages of the above invention seem to me to consist in the great economy and simplicity of the chair, the facility of placing

436 the rails in it, the facility of adjusting them completely in line by the introduction, when necessary, of thin plates of sheet iron or other metal between the rail and shoulder of the chair, the facility of forcing and keeping the rails in line, and the power of securing them more effectually than any other mode admits of.

What I claim as my invention is the plan of attaching the ends of rails to chairs by screw-bolts passing through openings in the chairs and corresponding openings in the rails, leaving open the chair on one side end and giving a shoulder to the opposite side, whereby the rail is thoroughly supported against the lateral action of engines and cars and at the same time the means are afforded of placing and forcing the rails in line as above described.

MONCURE ROBINSON.

Witnesses:
I. H. KING,
HENRY BISHOP.
Ex'd A. E. B.

437 *Opinion.—August 27th*, 1878.

U. S. circuit court, eastern district of New York.

ASA JOHNSON ET AL.
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

BENEDICT, J.:

This action is brought to restrain the Flushing and North Side Railroad Company from using a certain fastening for their railroad rails commonly known as the "fish-plate joint," upon the grounds that the plaintiffs have the exclusive right to the use of such fastening by virtue of a patent for an improvement in fastening sheet-metal to roofs, reissued April 16, 1872, and marked reissue No. 4870.

The fastening complained of consists of two plates fastened one on each side of the two rails to be connected together, and bolted by means of bolts passing through the rails and through slots in the plates. The two rails are thus securely fastened together, all change of their relative position except in the single direction of the slots in which the bolts can slide being prevented, while thus the expansion and contraction of the rails in that direction is accommodated.

In order to a proper understanding of the question to be discussed it is necessary to call attention to the language of the reissued patent upon which the plaintiff's rights depend.

In the title of the patent the invention is designated as "an improvement in fastening sheet-metal to roofs." In the specification the invention is called sometimes "an adjustable fastening" and sometimes "an adjusting fastener."

438 The only description of the invention given is in connection with its use in fastening metallic roofs to buildings, but it is stated that the fastener may be used wherever it is necessary to allow for the contraction or expansion of materials to be fastened together.

The specification states that the "principle of the invention consists in connecting the metal to be fastened with a bolt or pin arranged to slide in slotted bearings in the direction of expansion or contraction,

said adjustable bolt and its bearings being combined with the materials to be fastened.

In connection with the description, drawings are referred to in which, as the specification says, are indicated "the screws for attaching the metallic roof to the stud—the stud—the adjusting bolt or pin, to which the metallic roof is connected by the stud and screw, said bolt passing through the stud and through the slots of the side-plates or flanges—the side-plates or flanges provided with slots which form the bearings of the adjusting bolts—the bottom-plate used as a convenient means of attaching the side-plates to the wooden sheathing of the building—an India-rubber cord which may be used in applying the adjustable fastener to buildings—the screws for attaching the bottom-plate and with it the side-plates to the sheathing—the sheathing greatly enlarged in thickness in proportion, to illustrate the details of the connection of the adjustable fasteners to buildings—the metallic roofing."

The specification, after explaining the method of using the invention in attaching metallic roofing to buildings, goes on to say: "Both the wooden sheathing and the metallic roof are thus connected to the self-adjusting mechanism, consisting of the slotted side-plates and the bolt which slides in them."

Two claims are set forth in this patent, the second of which is the only one requiring attention, and is as follows:

"2. I claim in combination with the adjusting bolt and slotted
439 side-plates, suitably connected to, and combined with, the materials to be fastened together, for the purpose of accomodating the expansion and contraction of such materials with reference to each other, substantially as specified."

The word with in the first sentence of this claim is, by the plaintiffs, treated as a clerical mistake, and the claim read as if that word were absent. It is so treated here.

Some difference of opinion has been expressed as to what is the proper construction to be put upon this patent.

According to the plaintiffs, it is to be understood as covering a combination of old devices adapted for use in connecting materials to be fastened together in all cases where it is necessary to allow contraction or expansion of the materials; the elements of which combination are two pieces of material to be fastened together—two slotted side-plates to furnish bearings for the adjustable bolt, and also to serve as clamps on opposite sides of the materials to be fastened together—an adjusting-bolt to hold said clamping plates in position thereon.

This construction of the reissue is necessary for the plaintiff's case, as otherwise the case would fail upon the question of infringement, and if such construction be the true one, the question of infringement is disposed of, it being conceded that the use of the fish-plate joint would be an infringement of the plaintiff's patent so construed. Under such circumstances it may properly be assumed for the purposes of this decision that the plaintiff's understanding of his patent is correct.

The enquiry then turns to the question of the validity of the reissue. Its validity is denied by the defendants upon the ground that if construed according to the plaintiffs' understanding and as it must be in order to bring the defendants within its scope, it is for an inven-
440 tion different from any described in the original patent, and is therefore void.

The proper construction of the original patent becomes therefore a decisive question in this case. That patent is for a combination.

The word combination is indeed not to be found in the instrument,

but the specification is devoted to a description of the inventor's mode of combining certain simple and well-known devices in order to produce a specified result.

Certain simple devices appear in the description, but as elements of a combination, and the language nowhere conveys the idea that the inventor has discovered any thing but a method of using old devices combined in a certain way to produce a certain result. Whether the claim as constructed is for a combination or not is immaterial here; as that claim, although forming the first claim of the reissue, is not relied upon by the plaintiff. What is described is alone material, and that is nothing unless it be a combination.

The elements of the combination which in the original patent is set forth as having been first invented by the patentee are plainly designated in the description given, and are the stud—the flanges—the bottom-plate—the adjusting-bolt "passing through the stud," and capable of moving in the slots of the flanges.

It has been earnestly contended in behalf of the plaintiff that the specification does not declare either the stud or the bottom-plate to be elements of the combination, and mentions them simply as means of applying the invention in the particular case taken as an illustration. But the language of the description is plain. The stud is described as not only connecting, but adjusting. It is designated "the adjustable connecting-stud." It is spoken of as distinct from the metal to be connected, and it will, as it is said, "accommodate itself to any direction required by the metal."

441 In the drawings which are furnished to represent the fastener the stud appears, and without any intimation that it is not an essential part of the invention; nor is there throughout the whole patent any language capable of suggesting that the stud is not as essential a part of the invention as any other portion described.

Equally specific is the original patent in declaring the bottom-plate to be an element of the combination.

The bottom-plate appears in all the drawings, and nowhere is there an intimation that it is not an essential feature of the invention. The constant and necessary presence of the bottom-plate as an element of the combination is also implied in the designation given to the bearings of the bolt, which in the original patent are always designated flanges and never as side-plates.

In this connection it will be useful to notice that in the reissued patent a change of phraseology has been adopted in speaking of the stud as well as of the bottom-plate; and explicit language not found in the original is inserted for the plain purpose of eliminating the stud and the bottom-plate from the combination. Thus where in the original the language is "Fig. 3 is an end elevation of the self-adjusting fastener," in the reissue the language is "Fig. 3 is an elevation in section of my adjustable fastening, and the device for connecting the same to the metal roof detached." Where in the original the language is "Fig. 5 is a plane view of the bottom-plate"—in the reissue the language is "Fig. 5 is a plane view of the bottom-plate, to which the bearings of the adjusting-bolt are attached in this instance." What in the original are in all cases termed flanges, in the reissue are sometimes termed side-plates and sometimes "flanges or side-plates." The original says, "I may find in using my adjustable fastener it necessary to make some of them—those that are in the parallel lines—with the flanges to fit up close to the sides of the stud." In the reissue the statement is, "When, how-

ever, the movement is only sensible in the direction of the slots, the side-plates are made to fit up close."

442 These changes and additions made in the reissue, as understood by the plaintiffs, are not mere corrections whose effect is to render accurate and specific what was before uncertain, but they work an essential alteration of the specification, and effect the elimination from the combination of two elements—the stud and the bottom-plate—which before that were described as essential elements of the combination secured.

The character of these changes tends to confirm the conclusion that the original patent is correctly interpreted when it is held to include the stud and bottom-plate as essential elements of the invention secured. The invention intended to be described and secured by the original patent is a combined device, constructed in two members, so connected together by means of the bolt and its slotted bearings as to permit a change to a limited extent in the relative position of the two members with reference to each other. This device is to be inserted between the two materials to be fastened together, a connection of those materials being formed by fastening the adjusting-stud to one and the flanged-bottom plate to the other.

In the reissue, as it must be understood in order to sustain the charge of infringement, the stud forms no part of the fastener, but has become a part of the material te be fastened and the side-plates not only furnish bearings for the bolt, but perform the additional important and essential function of furnishing a strong lateral support to the materials by clamping the same between them.

In the original the language plainly importing as it doe' that the stud is an essential part of the fastener, and not part of the material to be fastened, excludes the idea that the flanges are in any case to furnish lateral support to the materials to be fastened or to clamp the same.

It is thus seen that the essential elements of the combination described and sought to be secured by the reissue are different from the essential elements of the combination described in the original,

443 and that the result produced by the combination described in the reissue is different from that produced by the combination described in the original patent.

By these changes a substantial change in the subject-matter has been accomplished, and upon established principles the conclusion must follow that the reissue is void. It is unnecessary, therefore, for me to go further; but it is proper, before dismissing the bill, to notice two adjudged cases cited by the opposing counsel as conclusive authority in favor of their respective views.

On the part of the defendant the case of Gill vs. Wells has been cited as being on all-fours with this case, and an authority adverse to the position of the plaintiffs.

If I am correct in my understanding of the patents under consideration, the case in hand is not precisely like the case of Gill vs. Wells, because there not only was there an omission of one well-described ingredient of the patented combination, but there were substituted in its place several other devices not equivalents for the omitted element. Here no new device has been substituted in place of the stud, but by removing the stud from the combination, and describing it as part of the material to be fastened, a new function has been given to the flanges, viz, that of clamping between them the material to be fastened. Nevertheless the reasoning of the court in Gill vs. Wells affords support to the conclusion which I have reached in this case.

On the part of the plaintiff the case of Herring vs. Nelson (Johnson, J., Sept. 1877, 12 Off. Gaz., p. 1) has been cited as being in opposition to the case of Gill vs. Wells, and an authority in support of the plaintiff's case binding upon this court.

A reference to this opinion in Herring vs. Nelson, one of the latest of the opinions of that learned judge whose recent death is so greatly deplored, is sufficient to show that it was not understood to be in
444 conflict with the decision in Gill vs. Wells. Nor do I understand it to be in conflict with my conclusion in this case.

The case of Herring vs. Nelson was one where there was described in the original patent two results capable of being conceived of as independent of each other and shown to contribute to a common result. These two results the original patent showed to be capable of being attained by separate and independent elements combined in a manner described.

The common result of the complete combination of all the elements described was the cooling without waste of meal in the process of converting grain to flour. But, as the opinion is careful to state, the specifications and drawings could not fail to disclose to any intelligent examiner that while the combined action of all the parts described produced the complete result of cooling and saving the waste, there was described a subcombination, producing a separate, and independent result, viz., the cooling only. It was therefore held that the inventor, having omitted in the original patent to claim the subcombination thus described, might do so by a new claim in a reissue. The present is no such case.

Here it is impossible to gather, from the original patent, a hint that the slotted flanges and sliding-bolt without the stud and bottom-plate will produce an independent result capable of being separated from the complete result sought to be attained by the use of the complete combination; nor is there any language capable of suggesting that the invention secured will not only connect the materials together, but also prevent their lateral movements by securely clamping them between its flanges.

The views I have thus expressed are fatal to the plaintiffs' claim and render it unnecessary to consider the other questions discussed by counsel.

There remains, therefore, but to direct that the bill be dismissed with costs.

445 At a stated term of the circuit court of the United States for the eastern district of New York, held at 172 Montague street, in the city of Brooklyn, Kings Co., New York, on the fifteenth day of January, 1879.

Present, the honorable Charles L. Benedict, justice.

ASA JOHNSON AND THOMAS S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

On reading and filing the annexed consent, it is ordered that T. Astley Atkins and Israel Minor, jr., be, and they hereby are, substituted in the place and stead of Edward J. Cramer as solicitors for the complainants above named.

By the court.

B. LINCOLN BENEDICT, *Clerk.*

Filed January 15th, 1879.

446 U. S. circuit court, eastern district of New York.

ASA JOHNSON AND THOMAS S. SANDFORD
agst.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

It is hereby consented and agreed that T. Astley Atkins and Israel Minor, jr., be substituted in my place and stead as solicitors for the complainants in this action, and that an order to this effect be entered herein without further notice.

Dated N. Y., January 2, 1879.

EDWARD J. CRAMER,
Comp'ts' Solicitor.

Filed January 15th, 1879.

447 At a stated term of the circuit court of the United States for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the 10th day of February, 1879.

Present, Hon. C. L. Benedict, judge.

ASA JOHNSON AND THOMAS S. SANDFORD
vs.
THE FLUSHING & NORTH SIDE RAILROAD Company.

This cause having been brought to a final hearing upon the pleadings and proofs therein, and F. H. Betts, esqr., and B. F. Tracy, esq., having been heard on the part of the complainants, and S. D. Law, esq., on behalf of the defendant, and the same having been duly considered by the court—

Now, at this term of the court, on motion of S. D. Law, of counsel for the defendant, it is found and hereby ordered, adjudged,
448 and decreed that the reissued letters patent No. 4870, granted to the above-named complainants April 16th, 1872, for an "improvement in fastening sheet-metal to roofs," being the letters patent for an alleged infringement of which this suit is brought, are null and void.

And it is further ordered, adjudged, and decreed that the bill of complaint in this cause be, and the same is, dismissed as against the defendant.

And it is further ordered, adjudged, and decreed that the complainants pay to the defendant the costs of this suit to be taxed, and that in default of payment thereof the said defendant have execution therefor according to law.

CHAS. L. BENEDICT.

(Endorsed:) Decree of final hearing. Filed & entered February 10, 1879.

449 At a stated term of the circuit court of the United States for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 14th day of April, 1879.

Present, Hon. Chas. L. Benedict, circuit judge.

ASA JOHNSON AND THOMAS S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

This cause having heretofore been brought to a final hearing upon the pleadings & proofs, and having been argued on behalf of the parties thereto and considered by the court;

And a decree having been heretofore, on or about the 10th day of February last, made and entered in this cause adjudging and decreeing that the letters patent, reissue No. 4870, dated April 16, 1872, for an alleged infringement of which this suit was brought, are null
450 and void, as being for an invention different from that described in the original patent, and also adjudging and decreeing that the bill of complaint in this cause be dismissed as against the defendants;

And also further ordering, adjudging, & decreeing that the complainants pay the defendant the costs of this suit to be taxed, and it appearing to the court that the costs of the defendant in this suit have been taxed by the clerk at the sum of eleven hundred and twenty-six dollars and thirty-six cents:

Now, on motion of S. D. Law, of counsel for defendants, it is further ordered, adjudged, and decreed that the above-named defendant, The Flushing and North Side Railroad Company, recover of the said complainants the said sum of eleven hundred & twenty-six dollars and thirty-six cents, and have judgment therefor, and that in default of payment thereof the said defendant have execution thereof according to law.

CHAS. L. BENEDICT.

(Endorsed:) Decree for judgment. Filed and entered April 14, 1879.

451 *Notice of appeal.*

U. S. circuit court for the eastern district of New York.

ASA JOHNSON AND THOMAS S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

GENTLEMEN: Please take notice that the complainants above named appeal to the Supreme Court of the United States from the decree entered herein on the 14th day of April, A. D. 1879, dismissing complainants' bill and declaring void the reissue of the letters patent therein set forth.

Dated at New York City, April 24, 1879.

T. ASTLEY ATKINS AND
ISRAEL MINOR, JR.,
Sol'c'rs for Compl'ts, 30 Park Place, N. Y. City.

To S. D. LAW, Esq., and HINSDALE & SPRANE, Esq'r's,
Sol'c'rs for Def'ts.

Filed April 24th, 1879.

452 Supreme Court of the United States.

ASA JOHNSON AND THOMAS S. SANDFORD, appel'ts,
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company, appel'ees.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Israel Minor, jr., being duly sworn, saith he is one of the solicitors for the complainants and appellants in the above-entitled cause; that on the 24th day of April, 1879, he served on the above-named defendants and appellees, The Flushing and Northside Railroad Company, a copy of the appeal filed in this cause with the clerk of the circuit court in and for the eastern district of New York by leaving the same for said appellees in the office of the circuit court aforesaid at the city of Brooklyn, New York.

ISRAEL MINOR, JR.

Sworn to this 29th day of April, 1879, before me.

EMIL BENEVILLE,
Notary Public, N. Y.

453 Supreme Court of the United States.

ASA JOHNSON AND THOMAS S. SANDFORD, complainants and appellants,
against
THE FLUSHING AND NORTHSIDE RAILROAD Company, defendants and appellees. } In equity.

To the honorable the Supreme Court of the United States:

The appeal of Asa Johnson and Thomas S. Sandford, the above-named complainants and appellants, respectfully showeth that upon the 7th day of May, 1872, the above-named complainants and appellants filed their bill in the circuit court of the United States for the eastern district of New York against the above-named defendants and appellees, wherein they complained and alleged as will more particularly appear, reference thereto being had; that complainants were then
454 both residents of the city of New York and citizens of the United States, and that the defendant was a corporation organized and doing business under the laws of the State of New York and having its principal office for the transaction of business in the town of Flushing, county of Queens, State of New York.

That on the 19th day of May, 1857, letters patent of the United States were duly issued and delivered to the said Asa Johnson, one of the above-named complainants, and to one William Higber and one Henry Link, for the term of fourteen years, for an improvement in the mode of fastening sheet metal on roofs, &c.; and numbered 17331, the bill showing the said Asa Johnson to be the true, original, and first inventor of said improvement; that on the 19th day of May, 1871, said letters patent were duly extended, upon application of said Asa
455 Johnson, for the further term of seven years, the interest therein of said Higbee and Link having ceased with the expiration of said original letters on the said 19th day of May, 1871.

That on the 11th day of January, 1872, the said Asa Johnson duly

assigned to Thomas S. Sandford, also one of the above-named complainants, a two-thirds interest in said letters patent, and the said Sandford is still owner thereof.

That on or about the 16th day of April, 1872, said complainants Johnson and Sandford, finding that said patent was inoperative by reason of a defective or insufficient specification, duly surrendered said patent, and having amended the specification of claim in accordance with the decision of the Commissioner of Patents in the premises, and in all things complied with the requirements of the statutes of the United States in such case made and provided, new letters pat-
456 ent of the United States for the same invention were upon said 16th day of April, 1872, duly issued and delivered to said complainants for the unexpired term of twenty-one years from the 19th day of May, 1857, which last-mentioned letters patent were numbered 4870.

That said complainants ever since the date of such reissue have been and now are entitled to all the rights, interest, and privileges thereby secured to them in and to said invention or discovery, and to the exclusive use thereof.

That said invention so patented is of great utility, has been extensively introduced into public use, and *and* complainants' rights therein generally acqu'esced in, and complainants would have made large gains, profits, and advantages from the manufacture, use, and sale thereof but for the wrongful acts of the defendants and others
457 set forth in said bill of complaint.

That without the license or permission of complainants or either of them the defendant ever since the 16th day of April, 1872, has violated and infringed upon the exclusive rights and privileges secured to said complainants by said letters patent by unlawfully and wrongfully making or causing to be made, selling or causing to be sold, using or causing to be used improved fastenings for rails and other metallic substances, each and all containing the said invention, discovery, improvements, and combinations, and that said defendant has derived and received, and are still deriving and receiving, from such use great gain and profit.

That defendant, though requested to desist from such unlawful use and to pay complainants the actual gains and profits derived
458 therefrom, refused so to do, by means of which acts and infringement and refusal said complainants suffered great damage.

And said complainants therefore prayed said court for a decree directing said defendant to account for and pay over to said complainants all such gains and profits as had accrued or arisen to or been earned or received by said defendant, and all such gains and profits as said complainants would have received but for the said wrongful acts and doings of said defendant, and all damages thereby sustained by said complainants, and that said court would assess the same or cause the same to be assessed under its direction, and increase the
459 same in its discretion as provided by law, and for a perpetual injunction restraining the defendant and its agents from doing or causing to be done any of the acts in said bill complained of, and for costs of said suit, and for such other relief as might be meet and equitable, and for a preliminary injunction of the same tenor and effect as that above referred to.

To which bill of complaint the defendant, The Flushing and North Side Railroad Company, filed their answer on the 9th day of October, 1872, in and by which answer it admits that on the 19th day of May, 1857, letters patent of the United States, numbered 17331, were issued

to the complainant' Asa Johnson, William Higbee, and Henry Link for an "improvement in fastening sheet metal on roofs;" that the interest of said Higbee and Link therein expired on the 19th day
469 of May, 1871; that on the day of May, 1871, said letters patent were extended for the further term of seven years from the 19 day of May, A. D. 1871; that on the 11th day of January, A. D. 1872, said Johnson assigned a two-thirds interest in said letters patent to the said Sandford; that the said Johnson and Sandford surrendered their said letters patent and obtained a reissue of the same bearing date April 16, 1872, numbered 4870, and entitled for "an improvement in fastening sheet metals to roofs."

It denies that said letters patent were inoperative by reason of a defective specification, or were lawfully surrendered, or that said reissued letters patent were lawfully issued and delivered to the said
461 complainants, or that the said Johnson was the original and first inventor of the improvements described and claimed therein, or that the complainants obtained any exclusive right or liberty by virtue of said letters patent.

It alleges that the self-adjusting fastener described in said letters patent, or a material and substantial part thereof claimed in said letters patent as new, was, prior to said invention by said Johnson, in public use upon many railroads in the United States and Europe, and was then known to a number of persons whose names are therein set forth, and was described and patented in letters patent of the United States granted to Moncure Robinson, and bearing date March 16, 1839, for an "improved mode of securing railroad rails in their chairs;" also in letters patent of the United States granted to Isaac R.
462 Trimble, bearing date April 10, 1855, and numbered 12704, for "an improved mode of splicing railroad rails."

It admits that it has since that date of complainants' said reissued letters patent used certain fastenings for rails, but denies that the same are substantially the same as the "self-adjusting fastener" described and claimed in complainants' said reissued letters patent, or that they contain, or that defendant ever made, used, or sold improved fastenings for rails or other metallic substances which contained, the invention, discovery, improvement, or combinations described and claimed in said letters patent, or that it ever infringed any of the exclusive rights or privileges purported to be granted to complainants by said reissued
463 letters patent, and prays to be dismissed with reasonable charges.

On the 19th day of October said defendant filed its amended or supplemental answer to said bill, wherein, in addition to the allegations set forth in said original answer, it avers that the "self-adjusting fastener," described in the letters patent issued to said complainant Asa Johnson, or a material part thereof, claimed as new, was patented in England in 1853 by letters patent granted to W. B. Adams, and a description thereof published in New York in 1858 by Halley and Colburn in a volume entitled "European Railways," to which special reference is made, and was also described in another volume entitled "Roads and Railroads, by Wm. Gillespie," published by A. S. Barnes & Co., in the city of New York, in 1853.

464 On the 16th May, 1876, said answer was, on consent, amended by inserting the names of other railroads and individuals to whom the use of the invention or "self-adjusting fastener" described in said letters patent was known before such invention by said Johnson, and on the 21st November, 1876, by inserting the names of others having such knowledge and by specifying the pages particularly referred to in the

volume entitled "European Railways," above mentioned, and on the 29th day of June, 1877, by alleging that self-adjusting fastenings for use in places and constructions whether metals require fastenings, and their expansion and contraction require accommodation, consisting of slotted plates or bearings, having holes elongated in the direction of ex-
465 pansion and contraction, in combination with fixed bolts passing through such slotted plates, or bearings, and on which they could move, were well known and in common use for different purposes and in different constructions long prior to the alleged invention of the complainant Asa Johnson, and by specifying particular applications of such self-adjusting fastenings, and setting forth the places of such application and use and the names of individuals and corporations applying and using the same, and of others having knowledge thereof, and by alleging an abandonment, *and of others having knowledge thereof, and by alleging an abandonment* and surrender of such invention to the public by said complainant, and that said letters patent, so far as it covers, or is claimed to embrace and cover, an adjustable fast-
466 ener as applicable to railroad rails, are illegal, void, and of no effect.

That testimony was taken on the part of the complainants and defendant upon the issues so raised in said suit before special examiners for that purpose, duly appointed under rule 67 of the Supreme Court of the United States.

And the cause having come on to be heard at a circuit court of the United States, held at the city of Brooklyn, in the eastern district of New York, on the 1st day of February, 1878, before Hon. Charles L. Benedict, the court, after considering such testimony and hearing counsel for the respective parties, rendered its decision dismissing said bill to be taxed, and declared said reissued letters patent void.

467 And an interlocutory decree in accordance with said decision was entered, by consent, on the 10th day of February, 1879.

That such costs having been taxed at $1,126.36, a final decree was, on the 14th day of April, 1879, made and pronounced in the cause wherein it was in substance adjudged and decreed that the letters patent reissue No. 4870, dated April 16th, 1872, for an alleged infringement of which this suit was brought, are null and void, and also adjudging that the said bill of complaint be dismissed against said defendant, and also further adjudging that these appellants pay to said defendant the said sum of $1,126.36 costs, and in default of such payment, that said defendants have execution therefor.

And said complainants are advised and insist that said court erred in finding that said reissued letters patent were void, and in dismissing said bill with costs, and in not sustaining said bill and granting the relief therein prayed for.

468 Wherefore these appellants appeal from the whole of said decree of said circuit court of the United States, and respectfully pray that the decree of the said circuit court, and the bill, answer as amended, pleadings, case, and exceptions, evidence, and all proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made sustaining

the said bill of complaint, granting the prayer thereof for relief, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, April 23rd, 1879.

ASA JOHNSON.
THOS. S. SANDFORD.

T. ASTLEY ATKINS and ISRAEL MINOR, Jr.,
Solicitors, 30 Park Place, New York.

469 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Asa Johnson and Thomas S. Sandford being severally duly sworn, deposes and says, each for himself, that he is one of the persons mentioned and described in the foregoing petition subscribed by him. That he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes the same to be true.

ASA JOHNSON.
THOS. S. SANDFORD.

Sworn and subscribed this 23rd day of April, 1879, before me.
[SEAL.] JOHN A. SHIELDS,
U. S. Commissioner, Southern Dist. N. Y.

470 (Endorsed:) Petition for appeal.

Allowed.

CHAS. L. BENEDICT.

Filed April 24th, 1879.

471 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

ASA JOHNSON AND THOMAS S. SANDFORD *ag'st* THE FLUSHING AND NORTH SIDE RAILROAD Company. } In equity.

Know all men by these presents that we, Asa Johnson, of the city of Brooklyn, Kings County, N. Y.; Thomas S. Sandford, of the city of Yonkers, Westchester Co., N. Y.; William T. Still, of the city of Brooklyn, Kings N. Y.; and James S. Cutter, of the city of Brooklyn, Kings Co., N. Y., are held and firmly bound unto the above-named The Flush-ing and North Side Railroad Company in the sum of two thousand two hundred and fifty-two and $\frac{72}{100}$ dollars, to be paid to the said The Flushing and North Side Railroad Company, for the
472 payment of which, we' and *and* truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas the above-named Asa Johnson and Thomas S. Sandford have prosecuted an appeal to the Supreme Court of the United States to revise the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of the above obligation is such that if the above-named Asa Johnson and Thomas S. Sandford shall prosecute said appeal to effect and answer all damages and costs if they
473 fail to make said appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

ASA JOHNSON.
THOS. S. SANDFORD.
W. T. STILL.
JAMES S. CUTTER.

Sealed and delivered and taken and acknowledged this 15th day of April, before me.

KENNETH G. WHITE,
Commissioner duly appointed by the Circuit Court of the U. S. for the Southern District of New York.

UNITED STATES OF AMERICA,
District of New York, ss:

William T. Still, one of the sureties in the foregoing obligation named, being duly sworn, doth depose and say that he is a resident of the State of New York, and a householder therein; that he is worth the sum of two thousand two hundred and fifty-two $\frac{72}{100}$ dollars over and above all his just debts and liabilities, and exclusive of property exempt by law from execution.

474 W. T. STILL.

Sworn to this 15th day of April, A. D. 1879, before me.

KENNETH G. WHITE,
Commissioner duly appointed by the Circuit Court of the U. S. for the Southern Dist. of New York.

UNITED STATES OF AMERICA,
District of New York:

James S. Cutter, one of the sureties of the foregoing obligation named, being duly sworn, doth dispose and say that he is a resident of the State of New York, and householder therein; that he is worth the sum of two thousand two hundred and fifty-two $\frac{72}{100}$ dollars over and above all his just debts and liabilities, and exclusive of property exempt by law from execution.

JAMES S. CUTTER.

Sworn to this 15th day of April, A. D. 1879, before me.

KENNETH G. WHITE,
Commissioner duly appointed by the Circuit Court of the U. S. for the South. Dist. of New York.

475 (Endorsed:) Bond for costs on appeal.

Approved April 24, 1879.

CHAS. L. BENEDICT.

Filed April 24th, 1879.

476 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the United States circuit court of the United States for the eastern district of New York, in the second cir-

cuit, do hereby certify that the foregoing pages, numbered from (1) one to four hundred and seventy-five (475) inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case Asa Johnson and Thos. S. Sandford vs. The Flushing and North Side Railroad Company, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, this 14th day of August, A. D. 1879, and of the Independence of the said United States the 104th.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

477 Supreme Court of the United States.

ASA JOHNSON AND THOMAS S. SANFORD, app'l'ts,
vs.
THE FLUSHING AND NORTH-SIDE RAILROAD Company, app'l'ees.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Russell Benedict, being duly sworn, says he is a clerk in the office of the solicitors for the complainants and appellants in the above-entitled cause; that on the 26th day of April, 1879, he served the citation filed in this cause with the clerk of the circuit court of the United States for the eastern district of New York on the above-named defendants and appellees, The Flushing and North Side Railroad Company, by delivering a copy of said citation to E. B. Hinsdale, esq., the secretary and a director of said appellees, personally, at his office, number 170 Broadway, in the city of New York; and by delivering a copy of said citation at the same time and place to the said E. B. Hinsdale, personally, as a member of the firm of Hinsdale and Sprague, the solicitors for said appellees; and by delivering a copy of said citation to S. D. Law, esq., personally, as the counsel for said appellees, at his office No. 140 Nassau street, in the city of New York. That at the time of making such service as aforesaid he exhibited to said Hinsdale and Law the original citation hereto annexed.

478

RUSSELL BENEDICT.

Sworn to before me this 29th day of April, 1879.

EMILE BENEVILLE,
Notary Public.

479 Supreme Court of the United States,

ASA JOHNSON AND THOMAS S. SANFORD
ag'st
THE FLUSHING AND NORTHSIDE RAILROAD Company.

By the honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York.

To the Flushing and Northside Railroad Company:

Whereas Asa Johnson and Thomas S. Sanford have lately appealed to the Supreme Court of the United States from a decree lately rendered

in the circuit court of the United States for the eastern district of New York, made in favor of you, the said The Flushing and North Side Railroad Company, and have filed the security required by law; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1879, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Brooklyn, in the eastern district of New York, in the second circuit, the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] CHAS. L. BENEDICT.

480 (Indorsed:) Supreme Court of the United States. Asa Johnson and Thomas S. Sanford vs. The Flushing and North Side Railroad Company. Citation and proof of service. T. Astley Atkins and Israel Minor, jr., sol'rs for appell'ts, 30 Park Place, N. Y. City.

Due service of within citation is hereby admitted.
Dated N. Y., Apr. 16, 1879.

G. D. LAW,
Of Counsel for East. R. R. Assoc'n.
HINSDALE & SPRAGUE,
Atty's for Appellee.
E. B. HINSDALE,
Sec'y of the Flushing & North Side R. R. Co. Appellee.

(Indorsement on cover:) No. 245. Asa Johnson and Thomas S. Sandford, appellants, vs. The Flushing & North Side Railroad Company. E. New York C. C. U. S. Filed 15th September, 1879.

ADDITION TO RECORD No. 245.

Stipulation of counsel aad addition to record.—Filed December 15, 1881.

Supreme Court of the United States. October term, 1881.

ASA JOHNSON ET AL., APPELLANTS,
v.
THE FLUSHING & NORTH SIDE R. R. CO. } No. 245.

1 United States circuit court, eastern district of New York.

ASA JOHNSON & THOMAS S. SANDFORD
vs.
THE FLUSHING AND NORTH SIDE RAILROAD Company.

And for a further answer to the bill of complaint in this cause, the defendant says that self-adjusting fastenings for use in places and constructions where metals require fastening, and their expansion and contraction require accommodation, consisting of slotted plates or bearings, having holes elongated in the direction of expansion and contraction in combination with fixed bolts passing through such slotted plates or bearings, and on which they could move, were well known and in common use, for different purposes, and in different constructions, long prior to the alleged invention of the complainant Asa Johnson.

That such self-adjusting fastening of slotted plates and bolts had been, long prior to any alleged invention of said complainant, applied to and used upon locomotives for the purpose of permitting the movement of the boiler on the frame of the locomotive, as the boiler expanded by heat, or contracted by becoming cooled; and that such application was used by the Baldwin Locomotive Works, and its predecessors in business, doing business at Philadelphia, Penn.

And by the Rogers Locomotive and Machine Works, and its predecessors in business, doing business at Paterson, New Jersey; and by Swinburne, Smith & Co., and their successors, the New Jersey Locomotive and Machine Works; and by Danforth, Cooke & Co., and their successors, the Danforth Locomotive and Machine Works, all doing business at Paterson, State of New Jersey, and by other locomotive builders.

2 And that a self-adjusting fastening, substantially the same in construction and operation as that described in complainant's patent, had also been, long prior to any alleged invention by the complainant, used in the laying upon railroads of the compound rail, so called, and of the old flat or strap rail, the latter, the strap rail, being the earliest form of rail used on railroads, and the former, the compound rail, being one of the earlest forms of rails, known as T rails; that strap rails, having self-adjusting fastenings, were laid on various railroads, and among others, on the Paterson & Hudson River Railroad, on the Utica & Schenectady Railroad, on the Schenectady & Saratoga Railroad, on the Rensselaer & Saratoga Railroad, on the Auburn &

Syracuse Railroad, on the Syracuse & Utica Railroad, and on the Tonawanda Railroad, and that such use was known to William S. Hudson and George Hollingsworth, both now residing at Paterson, New Jersey.

And that such compound rail was used on various railroads, and among others on the Southbridge & Blackstone Railroad and New York Central Railroad, so called, parts of the present New York & New England Railroad, and that such use was known to John H. Reed, now residing at Boston, Mass., and to R. E. Rickernow, residing at Elizabeth, New Jersey, and to many others.

And these defendants further answering on information and belief, say that the said Asa Johnson, if he was at any time the inventor of a self-adjusting fastener, substantially like that described and claimed in the letters patent referred to in the bill of complaint, as applicable to railroad rails, had abandoned the same and surrendered the same to the public, and that the said letters patent, so far as it covers or is claimed to embrace and cover such an adjustable fastener, as applicable to railroad rails, are illegal and null and void, and of no force and effect whatever.

It is hereby consented that the foregoing amendments to the answer in this cause may be filed, with the same effect as if originally made a part of the answer.

New York, June 29, 1877.

E. J. CRAMER,
Complainant's Solicitor.

3 Supreme Court, U. States.

ASA JOHNSON & THOMAS S. SANDFORD, appellants,
vs.
THE FLUSHING & NORTH SIDE RAILROAD COMpany. } No. 245.

It is hereby stipulated & consented that the record in the above-entitled cause may be amended, by inserting therein, at page 11 of the print, after the line "(Endorsed:) Amended answer. Filed Nov. 21, 1876," the two printed pages, hereto annexed.

Dated New York, Dec. 12th, 1881.

T. ASTLEY ATKINS & ISRAEL MINOR, JR.,
Att'ys for Appellants.

A. MCCALLUM, *Att'y for Appellees.*

THOMAS BRACKEN,
Of Counsel for App'l't.

(Indorsed:) Supreme Court, U. S. 1881, October term. No. 245. Asa Johnson et al., app'l'ts, vs. The Flushing and North Side R. R. Co. Stipulation of counsel and addition to record. Filed 15th Dec'r, 1881.

SUPREME COURT U.S.
FILED
MAR 22 1882

JOHNSON'S PATENTS

FOR

Fastening Sheet Metal to Roofs.

ORIGINAL PATENT,

No. 17,331, dated May 19, 1857,

AND

REISSUED PATENT,

No. 4870, dated April 16, 1872.

NEW YORK:
JOHN POLHEMUS, PRINTER AND STATIONER, 102 NASSAU STREET.
1881.

Original Patent No. 17,331, *May* 19, 1857.

THE UNITED STATES OF AMERICA.

To all to whom these Letters Patent shall come:

Whereas, Asa Johnson, of Cairo, New York, has alleged that he has invented a new and useful *Improved mode of fastening sheet metal on roofs, &c.*, (he having assigned his right, title and interest in said mode, to himself and William Higbie and Henry Link, of Little Falls, N. Y.), which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discover of the said Mode, and that the same has not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said Mode, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said Asa Johnson, William Higbie and Henry Link, their heirs, administrators or assigns, for the term of fourteen years from the nineteenth day of May, one thousand, eight hundred and fifty-seven, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, *the said Mode*, a description whereof is given in the words of the said Johnson in the schedule hereunto annexed and is made part of these presents.

In testimony whereof I have caused these Letters to be made Patent, and the seal of the Patent Office to be hereunto affixed. Given under my hand, at the city of

Reissued Patent, No. 4,870, *April* 16, 1872.

THE UNITED STATES OF AMERICA.

To all to whom these Presents shall come:

Whereas, Asa Johnson, of New York, New York, assignor of two-thirds interest to Thomas S. Sanford, has presented to the Commissioner of Patents, a petition praying for the grant of Letters Patent for an alleged new and useful *Improvement in Fastening Sheet Metals to Roofs*, (for which Letters Patent were issued to Johnson, Higbie and Link, dated May, 19, 1857, and extended seven years from May 19, 1870, which letters having been surrendered, the same have been canceled and new letters ordered to issue to him and said assignee on an amended specification), a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and whereas upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law.

Now, therefore, these Letters Patent are to grant unto the said Johnson and Sanford, their heirs or assigns for the term of twenty-one years from the nineteenth day of May, one thousand, eight hundred and fifty-seven, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this sixteenth day of April, in the

[L.S.] Washington this nineteenth day of May, in the year of our Lord one thousand, eight hundred and fifty-seven, and of the Independence of the United States the eighty-first.

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office,

C. MASON,
Commissioner of Patents.

[L.S.] year of our Lord, one thousand, eight hundred and seventy-two, and of the Independence of the United States of America the ninety-sixth.

B. R. COWAN,
Acting Secretary of the Interior.

Countersigned,
M. D. LEGGETT,
Commissioner of Patents.

Original Patent No. 17,331.

The Schedule referred to in these Letters Patent and making part of the same:

To all whom it may concern:

Be it known that I, Asa Johnson, of the town of Cairo, county of Green and State of New York, have invented a new and useful *mode of self-adjusting* FASTENING *for fastening metallic coverings to buildings, and in any and all other places where metals require fastening and their contraction and expansion demand accomodation*, and I do hereby declare that the following is a full, clear and exact description of the same, reference being had to the accompanying drawings and to the letters of reference marked thereon, in which

Fig. 1 is a side elevation of a building.

Fig. 2 is an end elevation or section cut through the roof in the line, *x x*, fig. 1.

Fig. 3 is an end elevation of the self-adjusting fastener.

Fig. 4 is a side elevation of the same.

Fig. 5 is a plan view of the bottom plate.

Reissued Patent No. 4,870.

Specification forming part of Letters Patent No. 17,331, dated May 19th, 1857; extended 7 years. Reissue No. 4,870, dated April 16th, 1879.

To all whom it may concern:

Be it known that I, Asa Johnson, of the city of New York, formerly of the town of Cairo, New York, have invented a new and useful *mode of self-adjusting* FASTENINGS *for fastening metallic coverings to buildings, and* FOR USE *in any and all other places where metals require fastening and their contraction and expansion require accommodation;* and I do hereby declare the following to be a full, clear, and exact description *thereof, which will enable those skilled in the art to make, and use the same,* reference being had to the accompanying drawing *forming a part of this specification* in which drawing—

Fig. 1 is a side elevation of a building.

Fig. 2 is an end elevation of a section through the roof in the line, *x x*, fig. 1.

Fig. 3 is an end elevation, in section, of my adjustable fastening, *and the device for connecting the same to the metal roof detached.*

Fig. 4 is a side elevation of the same in section.

Fig. 5 is a plan view of the bottom plate, *to which the bearings of the adjusting bolt are attached in this instance.*

The principle of my invention consists in connecting the metal to be fastened with a bolt or pin, arranged to slide in slotted bearings in the direction of expansion or contraction, said adjustable bolt and its bearings being combined with the materials to be fastened.

I have found my adjustable fastener peculiarly useful in fastening metallic roofs to buildings, and I proceed to describe its construction and use *in*

In Fig. 2, 5 is the bottom plate, S S screws passing through said plate into the sheeting of the roof, through which a hole is bored, or a hole may be bored where the substance is sufficiently thick, and the fastener let in from above and secured from the top side of the bottom plate.

The vertical dotted lines mark the distance that the stud is allowed to play by the contraction and expansion of the metallic covering; 1 the screw for fastening the metallic covering to the *adjustable stud* 2; 7 the india rubber cord passing through the stud, as seen at (*a a*), and then through the plate 5, as seen at *g*, in Fig. 4.

In Fig, 3, 1 is the crew, 2 the stud, 4 *the flanges*, 5 the bottom plate, 3 the pin passing through the stud 2, and moving in the slots in the *flanges* 4 4, 7 the india rubber cord.

In Fig. 4, 1 is the screw, 2 the stud, 7 the india rubber cord, 4 *the flange*, 5 the bottom plate, B the pin, S S the screws for attaching the plate to the sheeting of the roof, as seen in Fig. 2.

In Fig. 5, 2 the stud, 4 *the flange*, 7 the india rubber cord, (5) the bottom plate, 2 the hole through the bottom plate for the cord to pass through.

that connection, from which other uses will be obvious.

In using my self-adjusting fastener for *fastening metallic roofs to buildings*, I connect the sliding bolt or pin with the roof *by means* of a stud fastened to the same, and I form the *side plates, which contain the bearings for the sliding bolt, in connection with and as flanges of a bottom plate*, which is secured fast to the under side of the wooden sheathing of the building.

In the drawing, 1 indicates the screws for attaching the metallic roof to the stud; 2 is the stud; 3 is the adjusting bolt or pin, to which the metallic roof is connected by the stud and screw, said bolt passing through the stud 2, and through the slots of the *side plates or flanges;* 4 4 are the *side plates or flanges*, provided with slots, which form the bearings of the adjusting bolts; 5 is a bottom plate, *used as a convenient means of attaching the side plates to the wooden sheathing of the building;* 6 6 are the slots in the *side plates*, in which the adjusting bolt slides; 7 is an india rubber cord, which may be used in applying the adjustable fastener to buildings. It is connected with the stud by being passed through an opening in it. It then passes down on each side of the stud, and through an opening in the bottom plate, where it is fastened, as indicated at *g* in the drawing, and is used for keeping the stud in an erect position until after the stud has been inserted through the sheathing from below, and until it is attached to the metal roof. Without some contrivance of this kind it would be difficult, in the position indicated, to keep the stud in position while the connection was being made.

S S are screws for attaching the bottom plate, and with it the *side plates*, to the sheathing. G is the sheathing of the roof, greatly enlarged in thickness in proportion, to illustrate the details of the connec-

In the operation of my invention, after sheeting the roof, if the boards do not exceed an inch it thickness, or thereabouts, I bore a hole at the point where I wish to insert the stud, about the size as seen in vertical dotted lines in fig. 2. The holes may be made larger or smaller to allow for contraction and expansion, so that the studs can move freely in any direction required.

The bottom plate is then screwed firmly to the boards by the screws (*s*) (*s*) seen in fig. 2 and 4, and the screw 1 passes through the metallic covering into the stud 2, thus firmly fastening the covering K to the stud, as seen in fig. 2.

It will be further seen that the cord 7 passes through the stud 2, fig. 4, and then through the bottom plate, and is fastened together as at *g*, in said fig., thus always keeping the stud in an erect position until attached to the metal.

If the covering contract on a line parallel with the connecting pin S, *the adjustable connecting stud* 2 will move on it towards one of the flanges 4, when it expands it will move towards the opposite flange, thus moving towards the point of contraction, and

tion of the adjustable fastener to the buildings. H is the metallic roofing.

The method of using the invention in attaching metallic roofing to buildings is as follows: After sheathing the roof a hole is bored in the sheathing at he point where the adjustable fastener is to be used of sufficient size to allow the connecting stud to move in the same with the expansion or contraction of the metallic roof. These holes receive the slotted *flanges or side plates* 4, 4, and they are indicated in the drawing by the letter *a* (see fig. 2). They should be of the shape and size required by the extent and direction of the contraction and expansion to be allowed for. The *flanges or side plates* are inserted in the holes, and the bottom plate is then firmly secured to the boards or sheathing G, by the screws S S, as seen in fig. 2. Where the sheathing is sufficiently thick a hole may be bored into it to receive the fastener from above. The *side plates* 4, and adjusting bolt 3 are thus connected with the building.

The connection with the metallic roof is then effected by holding the stud in an erect position by means of the rubber cord, and attaching the stud to the roofing by means of the screw 1. Both the wooden sheathing and the metallic roof are thus connected to the *self adjusting mechanism consisting of the slotted side plates and the bolt which slides in them.*

It is obvious that if the metal of the roofing contracts or expands in a line with the slots in the *side plates* that the bolt will adjust itself to such contraction or expansion by sliding in the slots in the proper direction.

On the other hand, in cases where the line of contraction or expansion may be diagonal or at right angles to the line of the slots in the *side plates*, the connecting stud is arranged to slide upon the adjusting bolt, as it is shown it may do in figs. 2 and 3.

from the point of expansion, with the metallic covering.

The adjustable stud, in addition to its parallel and longitudinal movement, is capable also of a diagonal movement, thus *accommodating itself to any direction required by the metal* contracting or expanding.

I contemplate using them as general fasteners where it is necessary to allow for the contraction and expansion of the material used, not confining myself to buildings only.

I may find, in *using my adjustable fasteners, it necessary to make some of them*, those that are in the parallel lines, *with the flanges to fit up close to the sides of the studs*, as seen at 1, 1, in fig. 2, allowing them to move in but one direction on the pin 3, which slides in the slots in the flanges 4, 4, as seen at 6 in red ink, in fig. 4.

Having thus fully described the construction and operation of my invention, what I claim and desire to secure by Letters Patent,

Is the self-adjusting fastener as described, for the purpose of attaching metallic coverings to buildings and accommodating itself to the contraction and expansion of the metal, and for fastening metals in any and all other places where the contraction and expansion demand accommodation, substantially as set forth, or any mechanical device equivalent thereto.

ASA JOHNSON.

Witnesses:

WM. S. HALL,
GEORGE K. COMSTOCK.

Where, however, *the movement is only sensible in the direction of the slots, the side plates are made to fit up close*, as seen at fig. 2, in the illustrations marked *, where the side plates or flanges are seen in cross-section, so that the only practical adjustability shall be in the direction of the slots.

I contemplate using my invention as a general fastener where it is necessary to allow for the contraction and expansion of the material used, not confining myself to buildings only.

Having thus fully described the construction and operation of my invention, what I claim as new, and desire to secure by Letter Patent, is

1. The self-adjusting fastener, as described, for the purpose of attaching metallic coverings to buildings and accommodating itself to the contraction and expansion of the metal, and for fastening metals in any and all other places where the contraction and expansion demand an accommodation, substantially as set forth.

2. I claim, in combination with the adjusting bolt and slotted side plates, suitably connected to and combined with the materials to be fastened together for the purpose of accommodating the expansion and contraction of such materials with reference to each other, substantially as specified.

ASA JOHNSON.

Witnesses:

W. HAUFF,

E. F. KASTENHUBER.